

No. 14409

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United States  
Court of Appeals  
for the Ninth Circuit

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CLAUDE E. SPRIGGS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record

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Appeal from the United States District Court  
for the District of Arizona

FILED

OCT 1 1954

PAUL P. O'BRIEN

CLERK



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[Clerk's Note: When deemed likely to be of important *nature*, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

CLAUDE E. SPRIGGS, Per Se

730 W. Coronado Road,  
Phoenix, Arizona,

Appellant.

JACK D. H. HAYS,

United States Attorney,

ROBERT S. MURLLESS,

Assistant United States Attorney,

Federal Building,  
Phoenix, Arizona,

Attorneys for Appellee.





In the United States District Court for the  
District of Arizona

No. C-10711-Phx.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

CLAUDE E. SPRIGGS, Defendant.

### INDICTMENT

Violation: 26 U.S.C. 145(b) (Attempt to defeat  
and evade income tax)

The Grand Jury charges:

That on or about the 7th day of January, 1948, at Phoenix, County of Maricopa, State and District of Arizona, Claude E. Spriggs did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1947, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Arizona, at Phoenix, a false and fraudulent income tax return wherein it was stated that his net income for said calendar year was the sum of \$1,928.17 and that the amount of tax due thereon was none, whereas, as he then and there well knew, his net income for the said calendar year was the sum of \$7,049.15, upon which said net income there was owing to the United States of America an income tax of \$1,058.03.

In violation of Section 145(b), Internal Revenue Code; 26 U.S.C., Section 145(b).

A True Bill.

/s/ MARVIN L. CHAPMAN,  
Foreman

/s/ F. E. FLYNN,  
United States Attorney

[Endorsed]: Filed February 26, 1953.

---

[Title of District Court and Cause.]

MOTION BY DEFENDANT TO DISMISS  
INDICTMENT

The defendant moves that the Indictment be dismissed on the following grounds:

The defendant has been acquitted and in jeopardy of conviction of the offense charged therein in the case of United States of America vs. Claude E. Spriggs, in the United States District Court, for the District of Arizona, Case No. C-9558-Phx., terminated on the 19th day of November, 1951, at Phoenix, Arizona and by a judgment entered and filed in this Court at Phoenix, Arizona, on November 21, 1951.

Dated at Phoenix, Arizona this 20 day of March, 1953.

CHOISSER & CHOISSER,  
/s/ By JACK CHOISSER,  
Attorneys for Defendant

Acknowledgment of Service attached.

[Endorsed]: Filed March 20, 1953.

[Title of District Court and Cause.]

ANSWER IN OPPOSITION TO MOTION BY  
DEFENDANT TO DISMISS INDICTMENT

Comes now the United States Attorney and for answer in opposition to motion by defendant, Claude E. Spriggs, to dismiss indictment, states as follows:

I.

That defendant has not been acquitted of the offense charged in the indictment but was convicted on a similar charge by verdict of a jury in Phoenix, Arizona, on November 16, 1951, and was sentenced on November 19, 1951.

II.

That the judgment of a conviction on November 16, 1951 was reversed by the United States Court of Appeals for the Ninth Circuit in a substituted opinion filed September 3, 1952, which set aside an opinion filed on August 20, 1952, reported as United States vs. Spriggs, 198 F.2d 782.

III.

That the first indictment (No. C-9558-Phx.) was dismissed by order of this Court on October 14, 1952, by reason of a stipulation entered into by the then United States Attorney and the attorney for defendant.

IV.

That the present indictment was returned by the Grand Jury on February 27, 1953.

## V.

That at his insistence, on appeal, defendant successfully secured a reversal of his prior conviction and he cannot now claim that his action in having the judgment of conviction set aside shields him from another trial on the same charge.

## VI.

That defendant by entering into a stipulation to dismiss the original action is estopped from asserting such dismissal as a bar to another trial on the same charge.

## VII.

That on reversal of a judgment by the Court of Appeals, without further direction, a new trial follows.

Wherefore, the Government prays that the said motion of the defendant should be overruled.

JACK D. H. HAYS,  
United States Attorney  
/s/ ROBERT S. MURLLESS,  
Assistant U. S. Attorney

[Endorsed]: Filed January 7, 1954.

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[Title of District Court and Cause.]

## PLEA IN BAR

Comes Now the defendant, Claude E. Spriggs, and for his plea in bar to the indictment in the above entitled matter, alleges and states:

That on the 3rd day of April, 1951, in Cause No.

C-9558-Phx. the Grand Jury indicted the defendant, Claude E. Spriggs on three counts of tax evasion, for the years 1944, 1946 and 1947. That upon trial of the matter the defendant was acquitted on Counts I and II of the Indictment; that prior to the trial of the defendant, defendant demanded and was granted a Bill of Particulars and the Bill of Particulars as to Count III of the Indictment showed the net income for 1947 in the sum of \$7,048.95; that the Bill of Particulars further showed the unreported taxable capital gains consisted of two items (a) taxable portion of profit on sale of Lots 7 and 8, Block 15, Collins Addition, Phoenix, Arizona, \$1,698.15 (b) taxable portion of profit on sale of Lot 5, Eastwood Place, Phoenix, Arizona, in the amount of \$544.64. The third portion of Count III of the Indictment under the Bill of Particulars was depreciation overstated in the sum of \$2,978.60.

The indictment further stated that upon this Third Count there was due a tax in the sum of \$1,058.03.

The present indictment and the previous indictment are for the same years, for the same amount of taxes due, and for approximately the same amount of income, except a difference of twenty cents.

Therefore this defendant believes that the present indictment and Count III of the former indictment cover the same years, the same alleged violation and therefore a determination of the prior



indictment constitutes a plea in bar to the present indictment.

That on the 21st day of November 1951, in Cause No. C-9558, Phx., the judgment was entered by the above entitled Court, of guilty and same was filed upon the 21st day of November 1951.

Thereafter an appeal was made to the United States Court of Appeals for the Ninth District and said matter was reversed and the Court therein states "Upon trial, appellant was acquitted of Counts I and II upon his motion for a directed verdict of acquittal. He was also acquitted upon portions of Count III." The Court further went on to state that the only matter that was determined was depreciation overstated, which was the third item in Count III of the former indictment.

In the opinion of the Court of Appeals, reported at U. S. vs. Spriggs, 198 Fed (2) 782, the Court stated "whether this evidence, upon which the judgment below must stand or fall, is to be regarded as a confession, or as admissions, or as extra judicial statements, is of no consequence here. Under any name, they are insufficient to sustain a conviction, for there has been no independent proof of any crime having been committed."

The Court, by this finding, has reversed this case for insufficient evidence as the sole ground of reversal, alleging therein they need not go into whether there was any error committed by the Court in the trial of the matter.

That thereafter the mandate issued out of the Court of Appeals and the same was filed and re-

corded upon the records of this Court; that on the 14th day of October, 1952, which was after the mandate had been filed in this Court, the United States attorney and W. T. Choisser, attorney for defendant, made and entered into a Stipulation wherein they said that by reason of the mandate of the appellate court, spread upon the records of the above entitled court, on the 13th day of October, 1952, the Court made, by order of this court, dismissed the action.

That on the 15th day of October, 1952, the judgment of this Court made and entered its order that the action, U. S. of America, plaintiff, vs. Claude E. Spriggs, Cause No. C-9558, is hereby dismissed and the fine and the Court costs deposited in the Registry of the Court be returned to the defendant, Claude E. Spriggs.

Since the opinion of the Appellate Court showed there was insufficient evidence to sustain the conviction and since the Stipulation referred to the mandate of the Appellate Court, it is presumed that said action was dismissed under Rule 48 of the Federal Rules of Criminal Procedure, 18 U.S.C.A. Federal Rules of Criminal Procedure, page 537, under Rule No. 48 which became effective on October 20, 1949 and was in force and effect at the time this order of dismissal was made.

In the case of U. S. vs. Doe, 101 Fed. Supp. 609, the Court held that a dismissal of criminal prosecution can be approved only on showing that the government lacks evidence to warrant a prosecution. This case held further that Rule No. 48 of the

Federal Rules of Criminal Procedure, is that the judge must be convinced of public interest and that there had been a showing by the United States attorney that he had insufficient evidence to warrant a prosecution.

Therefore when the order of the court dismissing Cause No. C-9558, Phx., it was done with a showing on the part of the United States attorney, that he lacked evidence to warrant a prosecution.

The Court in the case of *State vs. Gates*, 25 NE (2) 471, states that where a defendant was discharged by reason of insufficiency of the evidence the defendant had been put in legal jeopardy.

Rule No. 48 of the Rules of Criminal Procedure, sub (a) thereof, states that when the United States attorney dismisses an action by leave of the court the prosecution thereupon shall terminate.

Therefore, since the Appellate Court has decreed by its judgment that Counts A and B of the Bill of Particulars to the Third Count of the indictment of Cause No. C-9558-Phx., the defendant had been acquitted by an order of the Appellate Court, and any further prosecution under the present indictment for the same count would certainly be placing the defendant in double jeopardy.

That since the dismissal of this matter, had on the 15th day of October, 1952, by an order of the above entitled Court, upon the ground of insufficient evidence and under the provisions of Rule 48 of Federal Rules of Criminal Procedure, a further prosecution under the present indictment would certainly deprive this defendant of his con-



stitutional rights and have this defendant stand the expense of an additional trial wherein he has heretofore been tried and acquitted and place his life and liberty in double jeopardy.

Wherefore, defendant prays that this Court will sustain this plea in bar and dismiss the indictment in the above entitled matter, with prejudice.

/s/ CLAUDE E. SPRIGGS,  
Defendant

Acknowledgment of Service attached.

[Endorsed]: Filed January 15, 1954.

---

[Title of District Court and Cause.]

### MOTION FOR BILL OF PARTICULARS

Comes Now the defendant and moves this Honorable Court for an order requiring the United States of America, by and through its attorneys, to set forth specifically the items, sums, figures and facts showing the alleged income, of the tax due thereon, and the sums from which the United States of America derived such facts, items, income and figures from which it made the calculations as to the sums contained in the indictment herein;

As to the items from which the net income of \$7,049.15 was computed and as to the computation from which an income tax of \$1,058.03 was computed;

The dates upon which the defendant received

said items of income, the persons or sources of said items of income;

Dated this 8th day of February, 1954.

/s/ CLAUDE E. SPRIGGS,  
Defendant

Federal Rule of Criminal Procedure, Rule 7 (f).

Memo of Points and Authorities

The items of income upon which the United States Government bases its charges of income tax fraud and evasion should be specifically set forth so that the defendant may prepare for his trial and be apprised of the nature of the charges against him.

Himmelfarb vs. United States, 175 Fed (2d)  
924

United States vs. Empire State Paper Corp.,  
8 Fed. Supp. 220

Rose vs. United States, 128 Fed (2d) 622

United States vs. Yoffe, 52 Fed. Supp. 175

Acknowledgment of Service attached.

[Endorsed]: Filed February 8, 1954.

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[Title of District Court and Cause.]

MINUTE ENTRY OF FEBRUARY 8, 1954

Honorable Claude McColloch, United States District Judge, specially assigned, presiding.

This case comes on regularly for arraignment this day. Robert S. Murlless, Esquire, Assistant

United States Attorney, appears for the Government. The defendant, Claude E. Spriggs, is present in person without counsel, acting as his own attorney, and is now duly arraigned. The defendant waives the reading of the Indictment and a copy thereof is handed to him.

It Is Ordered that this case be continued three days for plea, to allow defendant to file Motion for Bill of Particulars, and that all motions herein be set for hearing Wednesday, February 10, 1954, at 12:30 o'clock p.m.

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[Title of District Court and Cause.]

## ANSWER IN OPPOSITION TO MOTION FOR BILL OF PARTICULARS

Plaintiff, United States of America, resists motion for bill of particulars and respectfully shows this court:

### I.

That the particulars requested are within the knowledge of the said defendant;

### II.

That the particulars requested are all evidentiary matters to be given in evidence at the trial, and compliance therewith could not be made without injurious disclosure of the plaintiff's evidence; nor are such matters properly a part of the indictment in any respect;

## III.

That the particulars requested all call for the plaintiff to define the specific means employed in committing the offenses charged;

## IV.

That the indictment herein is certain and sufficient and is not broad nor indefinite, and does not endanger the defendant as to further prosecution on the same charges, nor does it make it impossible for him to prepare his defense;

## V.

That the indictment herein properly and sufficiently alleges offenses under the laws of the United States, to-wit, Section 145(b) of Title 26, United States Code.

Respectfully submitted,

JACK D. H. HAYS,  
United States Attorney  
/s/ ROBERT S. MURLLESS,  
Assistant U. S. Attorney

Memorandum of Points and Authorities in Opposition to Motion for Bill of Particulars

Defendant has filed with this court a motion asking for a bill of particulars with respect to "the items, sums, figures and facts showing the alleged income, of the tax due thereon, and the sums from which the United States of America derived such facts, items, income and figures \* \* \* calculations

as to the sums contained in the indictment \* \* \*.”

Defendant further requests particulars as to the dates upon which he is alleged to have received said items of income.

The granting of a bill of particulars is based upon a bona fide necessity of obtaining an amplification of the indictment in order to obtain a proper defense to the charges made therein. At best the requirement that the government file a bill of particulars only explains the indictment. At worst the requirement that the government provide a bill of particulars imposes an unreasonable sanction and limitation of the government's proof, in a particular case. If the defendant could compel the government to disclose its evidence in advance of trial, he would be benefited, for legally he is entitled to only such specifications as will apprise him of the nature of the charges in the indictment.

From the request filed for a bill of particulars, it seems readily apparent that the material sought is evidentiary in character and seeks a complete discovery of the evidence to be used to prove the government's case. Why each of the items is significant is not shown. The result is that it could only be to delimit and hinder the government in its proof of this case. Further, the request for material is peculiarly within the knowledge of the defendant. It is well settled that such proof is not the province of a bill of particulars.

*Braatelian vs. United States*, 147 F.2d. 888  
(C.A. 8th)

*Wong Tai vs. United States*, 273 U.S. 77, 82



Nye and Nissen vs. United States, 168 F.2d 846, 851 (9 Cir.), aff. 336 U.S. 613

Evans vs. United States, 153 U.S. 584, 590

United States vs. Skidmore, 123 F.2d 604, 607

United States vs. Wexler, 6 F.Supp. 258 (S.D. N.Y. 1933), affirmed 79 F.2d 526 (C.C.A. 2d, 1935, certiorari denied (1936) 297 U.S. 703

Lisansky vs. United States, 31 F.2d 846

Levin vs. United States, 5 F.2d 598

For the reasons stated, this court should hold the indictment herein to be sufficient and should deny the defendant's motion for a bill of particulars.

Respectfully submitted,

JACK D. H. HAYS,  
United States Attorney  
/s/ ROBERT S. MURLLESS,  
Assistant U. S. Attorney

[Endorsed]: Filed February 9, 1954.

---

[Title of District Court and Cause.]

## RESPONSE TO DEFENDANT'S MOTION FOR BILL OF PARTICULARS

Comes Now the United States of America, plaintiff herein, by Frank E. Flynn, United States Attorney for the District of Arizona, and E. R. Thurman, Assistant U. S. Attorney, and in response to defendant's motion for bill of particulars respectfully submits the following:

\* \* \* \* \*

III.

Count III of the Indictment:

Net Income for 1947.....\$7,048.95

Unreported taxable capital gains consist of the following:

(a) Taxable portion of profit on sale of  
Lots 7 and 8, Block 15, Collins Addition,  
Phoenix, Arizona, to Jesse Arreola  
on 8/14/47 .....\$1,698.15

(b) Taxable portion of profit on sale of  
Lot 5, Eastwood Place, Phoenix, Arizona,  
to Howard M. Vandenberg on  
11/20/47 ..... 544.64

Total unreported taxable capital gains.....\$2,242.79

Depreciation overstated:

This item consists of the overstatement  
of depreciation by the defendant as  
the result of his having falsely represented  
the cost of his property located  
on Henshaw Road, Phoenix, Arizona,  
on which he claimed excessive depreciation  
in the amount of..... 2,978.60

Understatement of net income..... 5,221.39

Reported net income per return..... 1,928.17

Total ..... 7,149.56

Arithmetical error on return..... 100.61

Net income per indictment.....\$7,048.95

FRANK E. FLYNN,

U. S. Attorney for Dist. of Arizona,

/s/ E. R. THURMAN,

Assistant U. S. Attorney,

Attorneys for Plaintiff

[Endorsed]: Filed May 31, 1951.

[Title of District Court and Cause.]

MINUTE ENTRY OF FEBRUARY 10, 1954

Honorable Claude McColloch, United States District Judge, specially assigned, presiding.

Robert S. Murlless, Esquire, Assistant United States Attorney, appears for the Government. The defendant, Claude E. Spriggs, is present in person without counsel, acting in his own behalf. The defendant's Motion to Dismiss, and Plea in Bar, and Motion for Bill of Particulars, are now argued by the defendant and counsel for the Government and the court reserves ruling thereon.

The defendant is arraigned, waives the reading of the Indictment. The defendant's plea is not guilty, which plea is now duly entered. It Is Ordered that the defendant be allowed to remain on his own recognizance. It Is Ordered that said Motion to Dismiss, Plea in Bar and Motion for Bill of Particulars be and they are denied.

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[Title of District Court and Cause.]

ORDER

In the above entitled matter, the motion of plea in bar filed by the defendant, argued by him in his own behalf, and for the plaintiff by Mr. Jack D. H. Hays, United States Attorney for the District of Arizona, by Robert S. Murlless, Assistant United States Attorney, this 10th day of February, 1954,



and the court being fully advised in the premises, it is Ordered:

That the plea in bar of defendant is granted in part and denied in part: that the plea in bar is granted with respect to the specific items of alleged unreported income, and it is denied with respect to the specific items of alleged fraudulent depreciation, as appears in the indictment in the above entitled cause.

Dated this 25th day of February, 1954.

/s/ CLAUDE McCOLLOCH,  
Judge, District Court for the Dis-  
trict of Arizona

[Endorsed]: Filed February 25, 1954.

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[Title of District Court and Cause.]

MOTION OF PLAINTIFF FOR REHEARING  
ON DEFENDANT'S PLEA IN BAR

(Double Jeopardy)

Plaintiff, United States of America, now respectfully moves this Honorable Court for a rehearing on the defendant's plea in bar, filed in the above entitled matter, upon which an order was made on or about the 25th day of February, 1954, granting in part, said plea: this motion is made to the end that this Honorable Court's judgment or order, above mentioned, be modified to deny said plea in bar.

This motion is made upon the grounds, for the reasons and upon the authorities set forth in Memorandum hereto attached.

Dated this 12 day of March, 1954.

JACK D. H. HAYS,  
United States Attorney  
/s/ ROBERT S. MURLLESS,  
Assistant U. S. Attorney

### Notice

To: Claude E. Spriggs, Defendant and Claude E. Spriggs, Attorney at Law, 730 West Coronado Road, Phoenix, Arizona:

You will please take notice that the above entitled motion will be urged, to the above entitled Court, on the 22nd day of March, 1954, at the Court Room in the Federal Court House Building, Phoenix, Arizona, at 12:30 o'clock in the afternoon of said day or soon thereafter as counsel may be heard.

Dated this 12 day of March, 1954.

JACK D. H. HAYS,  
United States Attorney  
/s/ ROBERT S. MURLLESS,  
Assistant U. S. Attorney

### Memorandum

Defendant, Claude E. Spriggs, has filed various motions, in the above entitled matter, to plead double jeopardy. One of these motions was a motion

to dismiss. Another of these motions was designated "Plea in Bar".

These motions had, as their significant assertion, the claim that the Indictment, in No. C-10,711-Phx., is barred by reason that it states the identical offense, against the same defendant, upon which that defendant was once before put in jeopardy. The plea goes upon the basis that the Indictment, in the above entitled matter, constitutes a second jeopardy.

### Summary of Prior Proceedings

On April 3, 1951, the grand jury returned an Indictment charging the defendant, Claude E. Spriggs, with three counts of income evasion; Count I was as to the year 1944; Count II was as to the year 1946; and Count III was as to the year 1947. Upon trial defendant was granted judgment of acquittal on Counts I and II above mentioned, and upon Count III, above mentioned, was found guilty by verdict of a jury. Defendant appealed the conviction and judgment was reversed by the United States Court of Appeals for the Ninth Circuit in a substituted opinion filed September 3, 1952, which set aside an opinion filed August 20, 1952. This opinion is reported as *United States vs. Spriggs*, 198 Fed. 2d. 782.

The first Indictment (No. C-9,558-Phx.), was dismissed by order of this Court on October 14, 1952, by reason of a stipulation entered into by the United States Attorney and the attorney for the defendant. The present Indictment (No. C-10,711-Phx.) was returned by the grand jury on Febru-

ary 27, 1953, and like the third count of the April 3, 1951 Indictment, charges the defendant with attempted evasion of taxes for the year 1947.

Plea in Bar was filed, by defendant, directed to Indictment in No. C-10,711-Phx., which is a restatement of Count III of Indictment in No. C-9558-Phx., Bill of Particulars filed in No. C-9558-Phx. as to said third Count, included two items of unreported alleged taxable gains.

Subsections (a) and (b), p. 8 Transcript of Record No. C-9,558-Phx., U.S.A. vs. Spriggs, C.A. 13258

Bill of Particulars as to said Count III included one item of alleged fraudulent restatement of depreciation.

Plea in Bar was granted (in No. C-10,711-Phx.) in part by order of February 25, 1954, barring specific items of alleged taxable gains unreported as set forth in Bill of Particulars filed in No. C-9,558-Phx.

Plaintiff filed the instant motion for rehearing and this memorandum to secure reconsideration of this ruling, to the end that said Plea in Bar be denied, in toto.

### The Question of Double Jeopardy

There follows certain extracts from the official transcript of record, United States Court of Appeals, No. 13,258, Claude E. Spriggs, Appellant, vs. United States of America, Appellee, which is in No. C-9,558-Phx., is contained on page 4 of said Transcript of Record; it will appear that Bill of

Particulars, with respect to Count III of first Indictment, is contained on page 8 of the Transcript of Record: it will be noted that the following motions were made and rulings were had, on pages 16 and 17 of said Transcript of Record:

“\* \* \* Counsel for defendant now moves for a judgment of acquittal as to Count II of the Indictment on the ground the evidence adduced does not substantiate the allegations of Count II, and moves to strike portions of Bill of Particulars as to Count II.

“It is Ordered that said Motion to Strike and said Motion for Judgment of Acquittal be granted as to Count II of the Indictment.

“Counsel for defendant now moves for Judgment of Acquittal as to Count 3 of the Indictment on grounds and for the reasons the evidence adduced does not sustain the allegations of Count 3 and moves to strike portions of Bill of Particulars as to Count 3.

“It is Ordered that subdivisions (a) and (b) of said Bill of Particulars as to Count 3 of the Indictment be stricken, and

“It is Ordered that said Motion for Judgment of Acquittal as to Count 3 of the Indictment be denied.

“And thereupon at 4:50 o'clock p.m., it is Ordered that the further trial of this case be continued until November 16, 1951, at 10:00 o'clock a.m., to which time the defendant and counsel are excused. \* \* \*”

Pages 15 and 16, Transcript of Record.

It will further appear that the defendant made



a motion for judgment of acquittal at the close of all of the evidence in the case:

Page 17, Transcript of Record.

It further appears that defendant made a motion for judgment of acquittal notwithstanding the verdict:

Page 19, Transcript of Record.

It appears on Page 18, Transcript of Record, referring to verdict, and also on Page 19, that the defendant was found guilty of Count III of the Indictment.

Pages 18 and 19, Transcript of Record.

The above motions for judgment of acquittal also were denied.

Page 21, Transcript of Record.

During the court of the trial motions to strike each of the subdivisions (a) and (b) of the Bill of Particulars as to Count III were granted. These motions and the orders with respect thereto appear at the top of Page 172 of Transcript of Record; at the top of Page 173, thereof; in the middle of Page 173 thereof; and at the bottom of Page 173 thereof, at which place this further proceeding in Court was had:

“The Court: Well, that will be stricken, then. And the depreciation. Let’s see, then, take the ’47 return, and on Line 1, the figure, (313) \$2,601.32, you add the depreciation overstated of \$2,978.60, so that figure would then be \$5,579.91.

“Mr. Choisser: Your Honor, may I be heard on that addition of depreciation overstated, \$2,978.60? I again submit that there is no competent evidence

from which that figure can be produced in any particular.

"The Court: There is evidence here upon which reasonable minds differ.

"Mr. Choisser: But, as to the amount, if your  
\* \* \*"

Page 173, Transcript of Record.

This matter was ruled upon on Page 174 of Transcript of Record, as follows:

"The Court: The motion for judgment of acquittal as to the 3d count is denied. The defendant will be on his proof. We will resume at 10 o'clock tomorrow morning as to the 3d count only. \* \* \*"

From the foregoing it appears that the Honorable Peirson M. Hall, Trial Judge at the trial of the Indictment No. C-9,558-Phx. nowhere indicated that there should be a judgment of acquittal upon the third count. We have searched the record, at least, and find no more significant statements than we have set forth above. We are aware in this regard that the opinion filed September 3, 1952, in *Spriggs vs. United States*, 198 Fed.2d. 782 in the middle of the right hand column of the first page thereof, contains the following:

\* \* \* "he was also acquitted upon portions of Count III \* \* \*"

*Spriggs vs. United States*, supra, at page 782.

We believe that the quoted portion of the Circuit Court opinion, above mentioned, is an erroneous statement of the treatment that was given Count III by the trial judge. Humbly we suggest that an acquittal was not granted at the trial of No. C-

9,558-Phx. on a part of a charge nor upon a part "of an offense".

We urge the Court that "jeopardy" cannot be taken piecemeal, that the charge of Count III of the Indictment was a single offense, and that the rulings of the trial court were purely matters of evidence, rulings as to the admissibility of evidence as to taxable gain where cost basis was not shown. It had been determined that there was not adequate evidence to prove cost basis of two alleged "taxable gains". Those alleged taxable gains were ordered "stricken".

We call attention to that part of the reporter's transcript as evidencing the fact that the problem with respect to the specific items of income as taxable gains, in Count III, was purely a ruling upon evidence. They were unable to show the cost of the buildings, therefore the Court would not allow them to prove those as taxable gains.

Page 149, et seq. Transcript of Record.

We submit that the order of this Court granting, in part, defendant's plea in bar, said order being dated the 25th day of February, 1954, directed, as it is, to a one-count indictment, has the effect of barring a "part of a crime", or barring "evidence of a crime": For example; the gist of the offense in the indictment in No. C-10,711-Phx. is "attempted evasion of income tax liability for 1947".

Gusick vs. United States, 54 F.2d. 618 (C.A. 7th Cir.), certiorari denied, 288 U.S. 545

The specific items of alleged taxable gains, reflected in that portion of the Bill of Particulars



filed in No. C-9,558-Phx. directed to Count III of the indictment under that number, are only evidentiary, or, in other words, are only a part of the alleged crime.

Page 8, Transcript of Record.

The Government need not prove all of the alleged omitted income. The Government need only prove a substantial understatement of income, and a substantial attempted evasion of tax liabilities.

Gleckman vs. United States, 80 F.2d. 394, (C.A. 8th Cir.). The gist of the offense alleged is the filing of a false return, understating income tax liability in a substantial amount, and it is formulated upon the principle that the filing of the return for the tax year 1947 was the attempted fraudulent evasion of liability. We do not understand that this "offense" as above described, is barred by a former jeopardy. The partial denial of the plea in bar, with respect to this indictment, above mentioned, bears out the proposition that the "offense" is not barred. We respectfully submit that the concept of "former jeopardy" contemplates (1) the identical offense, with respect to which (2) the identical defendant, having theretofore been tried.

U.S.C.A. Constitutional Amendment, V.

Gramer vs. United States, (C.A. 9th Cir.), 191 F.2d. 741

United States vs. One Dodge Sedan, 113 F.2d. 552

Helvring vs. Mitchell, 303 U.S. 391

That, to be barred by former jeopardy, the offense must be the identical offense, and the defend-

ant must be the identical person theretofore charged and tried, seems to be without question. There are many cases to the effect, even, that where one offense is included in another offense, a trial and determination upon the included offense is not a jeopardy, to make the trial upon the inclusive offense a double jeopardy.

Vamvas vs. United States, 13 F.2d. 347

Ryan vs. United States, 216 F. 13

Our research, extensive though not exhaustive, has revealed no case in which a "part of a crime" was held to be barred by a "former jeopardy".

We respectfully request the Court's reconsideration of the order, above mentioned, to the end that it be modified to deny the plea in bar of this defendant, directed to this single-count indictment, in No. C-10,711-Phx.

Respectfully submitted,

JACK D. H. HAYS,  
United States Attorney  
/s/ ROBERT S. MURLLESS,  
Assistant U. S. Attorney

[Endorsed]: Filed March 12, 1954.

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[Title of District Court and Cause.]

#### MINUTE ENTRY OF MARCH 22, 1954

Honorable Claude McColloch, United States District Judge, specially assigned, presiding.

Robert S. Murlless, Esquire, Assistant United

States Attorney, appears for the Government. Defendant, Claude E. Spriggs, is present in person and by counsel, Darrell R. Parker, Esquire.

Plaintiff's motion for rehearing on defendant's Plea in Bar is now called for hearing. Said motion is now argued by respective counsel and submitted to the court.

It Is Ordered that the order of February 25, 1954, granting said plea in bar in part and denying said plea in bar in part, be and it is vacated.

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[Title of District Court and Cause.]

**MOTION TO DISMISS (OR QUASH)  
INDICTMENT**

(Plea of Res Judicata)

Comes Now the defendant Claude E. Spriggs, by his attorneys, undersigned, and respectfully moves the above entitled Court that an order be made and entered herein dismissing the Indictment in this cause (and/or quashing the said Indictment) upon the ground that all, or a substantial part and portion, of the matters encompassed by said Indictment have been disposed of by prior adjudication.

In order to avoid burdening the record herein, defendant adopts by reference as a part of this motion all of the grounds, reasoning and authorities heretofore set forth in the pleading previously filed in this cause and entitled "Plea in Bar".

Wherefore, defendant prays that this motion be heard at the time of, or prior to, trial of this case,

at an hour and date convenient to the Court, and that upon the consideration thereof an order be made herein dismissing the said Indictment and/or quashing the same.

Dated this 29th day of March, 1954.

PARKER & MUECKE,  
/s/ By DARRELL R. PARKER,  
Attorneys for Defendant

### Authorities in Support of Motion

In support of the above and foregoing motion, counsel for defendant hereby incorporate by reference all the legal authorities and grounds and reasoning set forth in the pleading heretofore filed herein denominated as "Plea in Bar".

That in addition to the authorities hereinabove incorporated by reference, defendant proposes to rely upon the rule that the doctrine of res judicata applies equally to civil and criminal proceedings. The doctrine and application of res judicata, and the distinction between double jeopardy and res judicata are discussed in an opinion by Mr. Justice Douglas in *Sealfon vs. U. S.*, 332 U.S. 575, 92 L.Ed. 180. See also: 147 A.L.R. 992.

Counsel will also rely upon *Partmar Corporation vs. Paramount Pictures Theatres Corporation*, (February 8, 1954) 98 L.Ed. 301 (Adv. Sheet No. 8 to Vol. 98 L.Ed.) wherein Mr. Justice Reed, speaking for the United States Supreme Court, affirms the rule that a prior adjudication conclu-



sively disposes of all matters which were or might have been litigated or adjudged therein.

The United States Court of Appeals, having determined by its reversal of the prior judgment of conviction on the item of depreciation that the evidence was insufficient to sustain the conviction, and by inescapable inference that the Court should have either directed a verdict in favor of the defendant, or should have granted the motion for judgment notwithstanding the verdict, the issue even of depreciation is subject to the application of the doctrine of *res judicata*. Referring to certain evidence which was admitted, but which the Court of Appeals deemed inadmissible, the Court said on the second page of the decision of September 3, 1952:

“Even if the admissibility of such testimony be assumed, *arguendo*, the government case still falls far short of establishing the guilt of appellant by the further evidence required by our decision in *Davena, Jr., vs. United States*, No. 13,131, June 27, 1952, — F.2d. —.”

Furthermore, this defendant wishes again to urge the Court that the dismissal of the identical Indictment as is now before the Court, which was done by written stipulation and approved by order of the Court on October 15, 1952, operates under Rule 48 of the Federal Rules of Criminal Procedure to constitute a further adjudication of the matter favorable to this defendant, and that on either of alternative theories the doctrine of *res judicata* is

applicable and the Indictment here presented to the Court cannot stand.

PARKER & MUECKE,  
/s/ By DARRELL R. PARKER,  
Attorneys for Defendant

Acknowledgment of Service attached.

[Endorsed]: Filed March 29, 1954.

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[Title of District Court and Cause.]

#### MINUTE ENTRY OF MARCH 31, 1954

Honorable Claude McColloch, United States District Judge, specially assigned, presiding.

This case comes on regularly for trial this day. Robert S. Murlless, Esquire, Assistant United States attorney, appears for the Government. The defendant, Claude E. Spriggs, is present in person with his counsel, Darrell R. Parker, Esquire.

A lawful jury of twelve persons is now duly empaneled and sworn to try this case. It Is Ordered that all jurors not empaneled in this case be excused until April 1, 1954 at 10:00 o'clock a.m.

The court reserves decision on defendant's Motion to Dismiss (or Quash) Indictment (Plea of Res Judicata).

Opening statements to the jury are now made by respective counsel.

It Is Ordered that the defendant's Motion for a

Mistrial is denied and that the defendant's objection to introduction of any evidence is overruled.

Government's Case:

The following Government's witnesses testify on behalf of the United States: William McRae, Katherine Moss Fisher, H. M. Vandenburg, Joseph Cohen, Callota G. Arriola, R. A. Thompson, Harry C. Jones.

The following Government's exhibits are admitted in evidence:

2, Income Tax Return 1947.

4, Escrow Instructions re Vandenburg Property.

5, Escrow Instructions re Arriola property.

7, Closing Escrow Statement.

9, Agreement of Sale—Spriggs—Thompson.

10, Two Receipts.

11, Escrow Instructions.

12, Escrow Settlement.

13, Escrow Settlement Order No. 86577.

14, Escrow Settlement Order No. 88548.

It Is Ordered that the further trial of this case be continued until April 1, 1954, at 1:00 o'clock p.m.

Minute Entry of April 1, 1954

The jury and all members thereof, the defendant and all counsel are present pursuant to recess and further proceedings of trial are had as follows:

Government's Case continued:

The following Government's witnesses testify on behalf of the United States: Charles R. Custin, C. L. Howard, C. L. Sparks, William McRae, Lowell



Frisinger, Charles E. Dyer, Charles A. Mathews, James Struckmeyer, C. L. Sparks, Lloyd M. Tucker.

The following Government's exhibits are admitted in evidence:

15, Escrow Statement Frank Murphy Purchase.

16, Photostat copy Application Spriggs for Title Insurance.

17, Photostat copy Receipt Frank Murphy.

18, 2 documents—Agreement and Supplemental Escrow.

1, Income Tax Return 1946.

21, Drawing of lots, store, restaurant.

3, Income Tax Return 1948 and amended return.

22, Affidavit of Claude Spriggs.

23, Original Depreciation Schedule.

It Is Ordered that further trial of the case be continued until April 2, 1954 at 1:00 o'clock p.m.

#### Minute Entry of April 2, 1954

The jury and all members thereof, the defendant and all counsel are present pursuant to recess and further proceedings of trial are had as follows:

Government's Case continued:

The following Government's witnesses testify on behalf of the United States: Lloyd M. Tucker, Marjorie Ross, Don Hammon.

Government's Exhibit 24, Statement of Spriggs, is admitted in evidence. On motion of counsel for the Government, It Is Ordered that portions of Government's Exhibit 23 be stricken.

The Government rests.

In the absence of the jury, the defendant submits exhibits in support of Motion to Dismiss (or Quash) Indictment (Plea of Res Judicata). The following defendant's exhibits are received in evidence:

A, Minutes of Court C-9558.

B, Indictment C-9558.

C, Bill of Particulars.

D, Transcript of Record.

E, Mandate.

F, Opinion.

G, Stipulation and Order.

It Is Ordered that said Motion to Dismiss (or Quash) Indictment (Plea of Res Judicata) be and it is denied.

It Is Ordered that the defendant's Motion to Strike Testimony and Exhibits, is denied.

It Is Ordered that the defendant's Motion to Dismiss on account of Insufficient Evidence, is denied.

It Is Ordered that the defendant's Motion to Strike is denied.

Defendant's Case:

The following witnesses testify on behalf of the defendant: Arthur R. Beales, Mrs. Claude Spriggs.

Defendant's Exhibit A, Schedule of Depreciation Reserves, is admitted in evidence.

The defendant rests. Both sides rest. At the close of the evidence the defendant renews all motions heretofore made and It Is Ordered that said motions are denied.

It Is Ordered that further trial of this case be continued until April 5, 1954, at 1:00 o'clock p.m.

## Minute Entry of April 5, 1954

The jury and all members thereof, the defendant and all counsel are present pursuant to recess and further proceedings of trial are had as follows:

All the evidence being in the case is argued by respective counsel to the jury. Whereupon the court duly instructs the jury and the jury retire at 3:05 o'clock p.m. in charge of sworn bailiff to consider their verdict.

Subsequently at 5:16 o'clock p.m., the defendant and all counsel being present, the jury return into open court and are asked if they have agreed upon a verdict.

Whereupon, the foreman reports that they have agreed and presents the following verdict, to-wit:

[Title of Cause.]

## Verdict

We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find the defendant, Claude E. Spriggs, guilty as charged in the indictment.

Jeanne T. Otey, Foreman

The verdict is read as recorded and the jury is discharged from the further consideration of this case.

It Is Ordered that this case be continued for sentence and that the defendant be allowed to remain on his own recognizance.

[Title of District Court and Cause.]

## VERDICT

We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find the defendant, Claude E. Spriggs, guilty as charged in the indictment.

/s/ JEANNE T. OTEY, Foreman

[Endorsed]: Filed April 6, 1954.

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[Title of District Court and Cause.]

## MOTION FOR JUDGMENT OF ACQUITTAL NOTWITHSTANDING THE VERDICT

Comes Now the defendant, by his attorneys undersigned, and respectfully moves the above entitled Court for judgment of acquittal notwithstanding the verdict, upon the following grounds and for the following reasons, to-wit:

1. That all matters and things contained in the Indictment in this cause have heretofore been adjudicated in Cause No. C-9558 in this Court and in the resultant appeal to the United States Court of Appeals in the case of Spriggs vs. U. S., 198 F.2d 782, and the said adjudications have been in favor of this defendant and against the Government, and all matters contained in the Indictment herein are res judicata.

2. That the Indictment in this cause has hereto-

fore, with the approval of the United States District Court, been dismissed in writing, the Court having made such an order on October 15, 1952 (Defendant's Exhibit "G" in support of Motion to Dismiss), and under the general principles of res judicata, and in particular under the provisions of Rule 48 of the Federal Rules of Criminal Procedure, the dismissal of the prior Indictment constitutes an adjudication exonerating this defendant of the charge upon which he now stands convicted, and by the terms of said Rule terminates the said prosecution.

3. That in the trial of this case the Court has admitted evidence under sub-sections (A) and (B) of the Bill of Particulars (Exhibit "C" in evidence in support of Motion to Dismiss), whereas, this defendant has heretofore been acquitted upon all matters contained in the aforesaid sub-sections of the said Bill of Particulars.

4. That the trial of this defendant upon the Indictment herein constitutes placing the said defendant for a second time in jeopardy for the same offense.

5. That the evidence, and the whole thereof, is insufficient to sustain the conviction of this defendant under the Indictment in this cause.

6. That the Indictment in this cause fails to charge defendant with a public offense for which he has not heretofore been exonerated on his prior trial in Cause No. C-9558 in this Court and the re-



sultant appeal, No. 13258 to the United States Court of Appeals for the Ninth Circuit.

Dated at Phoenix, Arizona, this 8th day of April, 1954.

PARKER & MUECKE,  
/s/ By DARRELL R. PARKER,  
Attorneys for Defendant

Acknowledgment of Service attached.

[Endorsed]: Filed April 8, 1954.

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[Title of District Court and Cause.]

### MOTION FOR A NEW TRIAL

Defendant moves this Court to grant him a new trial for the following reasons and upon the following grounds:

1. The Court erred in denying defendant's Motion to Dismiss (or Quash) the Indictment herein upon grounds of *res judicata*.

2. The Court erred in denying defendant's objections to the introduction of any evidence in this cause upon grounds of *res judicata*.

3. That the Court erred in denying defendant's motion for judgment of acquittal made at the conclusion of the Government's case and renewed at the conclusion of all the evidence in the case.

4. That the Court erred in admitting the following of the Government's exhibits for the reason that the same were not relevant or competent, and



that no sufficient foundation was established for the admission of the same, to-wit:

Exhibits No. 1, No. 3, No. 4, No. 5, No. 7, No. 8, No. 9, No. 10, No. 11, No. 12, No. 13, No. 14, No. 16, No. 17 and No. 23.

5. That the Court erred in admitting in evidence the Government's Exhibits Nos. 22 and 24 for the reason that upon the status of the record at the time said exhibits were offered there was no sufficient proof of corpus delicti, and therefore no foundation for the admission of such exhibits, and that the said exhibits seriously prejudiced this defendant in the trial of the said cause.

6. That a new trial should be granted herein for the reason that the Court erred in admitting the testimony and exhibits of the witness Lloyd M. Tucker, to which objections were made.

7. That the verdict is contrary to the weight of the evidence.

8. That the verdict is not supported by substantial evidence.

9. That the Court erred in admitting any evidence in the cause and in failing to grant defendant's Motion to Dismiss (or Quash) the Indictment in said cause for the reason that all matters relating to the said Indictment were *res judicata* and had theretofore been effectively disposed of in Cause No. C-9558, and the subsequent appeal thereon No. 13258 by this Court and the United States Court of Appeals for the Ninth Circuit.

10. That the Court erred in making an order on February 25, 1954 upon request of the United

States Attorney, granting the previous Plea in Bar of this defendant to sub-sections (A) and (B) of the Bill of Particulars and assuring counsel for both sides that no evidence would be permitted under said sub-sections (A) and (B) and then subsequently vacating the said order and permitting evidence under said sub-sections of the Bill of Particulars.

11. That the Court should grant a new trial herein for the reason that on account of the rulings herein complained of, this defendant has been denied his legal and constitutional rights and has been deprived of a fair and impartial trial.

Dated at Phoenix, Arizona, this 8th day of April, 1954.

PARKER & MUECKE,  
/s/ By DARRELL R. PARKER,  
Attorneys for Defendant

Acknowledgment of Service attached.

[Endorsed]: Filed April 8, 1954.

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[Title of District Court and Cause.]

MINUTE ENTRY OF APRIL 12, 1954

Honorable Claude McColloch, United States District Judge, specially assigned, presiding.

This case comes on regularly for sentence this day. Robert S. Murlless, Esquire, Assistant United States Attorney, appears for the Government. The

defendant, Claude E. Spriggs, is present in person with counsel, Darrell R. Parker, Esquire.

The defendant's Motion for Judgment of Acquittal Notwithstanding the Verdict and defendant's Motion for New Trial are now argued by counsel.

It Is Ordered that said Motion for Judgment of Acquittal Notwithstanding the Verdict and said Motion for New Trial be and they are denied. Whereupon the judgment of the court is entered as follows:

In the District Court of the United States  
for the District of Arizona

No. C-10,711-Phoenix

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLAUDE E. SPRIGGS,

Defendant.

### JUDGMENT

On this 12th day of April, 1954, at Phoenix, Arizona, came the attorney for the Government and the defendant appeared in person and by counsel Darrell R. Parker, Esq.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of violating Title 26, Section 145(b), United States Code, (attempt to defeat and evade income tax) as charged.

The Court having asked the defendant whether

he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court, It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby fined in the sum of \$1,000.00.

It Is Ordered that the execution of judgment be stayed for a period of 24 hours upon the following terms and conditions: That the defendant shall within the period herein specified, pay to the clerk of this court for deposit in the registry fund, said fine in the sum of \$1,000.00, there to remain until final disposition of this case by appeal or otherwise.

/s/ CLAUDE McCOLLOCH,  
United States District Judge

[Endorsed]: Filed April 12, 1954.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

To the Clerk of the United States District Court,  
for the District of Arizona:

You Are Hereby Notified that Claude E. Spriggs, defendant in the above-entitled cause, residing at 730 West Coronado Road, in the City of Phoenix, County of Maricopa, State of Arizona, by his attorneys, Parker & Muecke, by Darrell R. Parker, residing at 713 West Palm Lane, in the said City of Phoenix, County of Maricopa, State of Arizona,



and having offices at 310 Luhrs Tower in the said City of Phoenix, Arizona, undersigned, hereby gives notice of appeal to the United States Court of Appeals, Ninth Circuit, San Francisco, California, from the verdict of the jury made and rendered herein on April 5, 1954, finding the said defendant guilty as charged in the Indictment herein, the order denying defendant's Motion for Judgment of Acquittal Notwithstanding the Verdict entered on April 12, 1954, and the order denying defendant's Motion for New Trial entered on April 12, 1954, and the judgment rendered thereon on April 12, 1954, by the United States District Court, for the District of Arizona, imposing the following sentence, to-wit: Fine of \$1,000.00.

General Statement of Offense: The Indictment charges attempt to defeat and evade income tax for the year 1947 in violation of 26 U.S.C. 145 (b) as amplified by the Bill of Particulars. The offense charged falls into three categories:

(a) Alleged taxable gain on the sale of Lots 7 and 8, Block 15, Collins Addition, Phoenix, Arizona, made on August 14, 1947, \$1,698.15;

(b) Alleged taxable gain on sale of Lot 5, Eastwood Place, Phoenix, Arizona, made on November 20, 1947, \$544.64;

(c) Over-statement of depreciation on property belonging to defendant and referred to as the "Henshaw Road property", Phoenix, Arizona, in which it is alleged that depreciation was over-stated in the amount of \$2,978.60.

It is charged on the foregoing that there was

owing to the United States of America an income tax of \$1,058.03.

The present place of confinement of the said defendant is:

Dated this 12th day of April, 1954.

/s/ CLAUDE E. SPRIGGS,

Defendant

PARKER & MUECKE,

/s/ By DARRELL R. PARKER,

Attorneys for Defendant

Acknowledgment of Service attached.

[Endorsed]: Filed April 12, 1954.

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[Title of District Court and Cause.]

## DESIGNATION OF RECORD ON APPEAL

To: The Clerk of the United States District Court in and for the District of Arizona, and to the United States of America, and its attorney, Jack D. H. Hays:

The defendant herein, Claude E. Spriggs, hereby designates the following record and portions thereof, and the transcript of the proceedings and evidence adduced herein to be contained in the record on appeal, to-wit:

1. Indictment;
2. Motion by defendant to dismiss indictment (dated March 20, 1953);
3. Plea in Bar (former jeopardy);



4. Motion for Bill of Particulars;
5. Bill of Particulars (from U. S. A. vs. Claude E. Spriggs, No. C-9558 Phx.) (Copy from page 8 of printed Transcript of prior case.)
6. Order of February 25, 1954 granting in part and denying in part the plea in bar;
7. Motion to Dismiss (or Quash) Indictment (Plea of res judicata);
8. Reporter's Transcript of the Evidence;
9. All exhibits received in evidence during trial on behalf of Government and defendant (Exhibits Nos. 6, 8, 19 and 20 not admitted in evidence);
10. All exhibits received in support of Motion for dismissal of Indictment.  
(Portions of Record in Cause No. C-9558 Phx.)  
Exhibits:
  - A. Minutes of Court, November 15, 1951;
  - B. Indictment;
  - C. Response to Motion for Bill of Particulars;
  - D. Transcript of Record, Appeal No. 13258.  
(Not to be printed but incorporated by reference to Spriggs vs. USA, No. 13258.)
  - E. Mandate of United States Court of Appeals, Ninth Circuit in Case No. 13258 and filed in Case No. C-9558 Phx.
  - F. Opinion in Cause No. 13258, Spriggs vs. U. S. A., 198 F.2d 782.
  - G. Stipulation and Order of October 15, 1952, in Cause No. C-9558.
11. All minute entries and orders of the Court made in the entire proceedings.
12. Verdict of the jury.

13. Motion for judgment of Acquittal Notwithstanding the Verdict.

14. Motion for a new trial.

15. Judgment and sentence of the Court.

16. Notice of Appeal.

17. Statement of Points on Appeal.

18. Designation of Record on Appeal.

Dated at Phoenix, Arizona, this 20th day of April, 1954.

PARKER & MUECKE,  
/s/ By DARRELL R. PARKER,  
Attorneys for Defendant

Acknowledgment of Service attached.

[Endorsed]: Filed April 21, 1954.

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[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH DEFENDANT-APPELLANT RELIES ON THIS APPEAL

The points upon which the defendant-appellant relies in this appeal are as follows:

1. The District Court erred in denying defendant's "Motion to Dismiss Indictment" (dated March 20, 1953) on ground of res judicata and former jeopardy.

2. The District Court erred in failing to sustain in full defendant's "Plea in Bar" predicated upon the grounds therein stated.

3. The District Court erred in vacating its order of February 25, 1954, sustaining in part and denying in part defendant's "Plea in Bar".

4. The District Court erred in its order of March 31, 1954, denying defendant's "Motion to Dismiss Indictment" based upon grounds of *res judicata*. (Motion dated March 29, 1954.)

5. The District Court erred in overruling defendant's objection to the Government's opening statement on grounds of former jeopardy and *res judicata*.

6. The District Court erred in overruling defendant's objection to introduction of any evidence by the Government in support of the indictment for reasons of former jeopardy and *res judicata*.

7. The District Court erred in denying defendant's motion for directed verdict of acquittal at the close of the Government's case for the reasons there given.

8. The District Court erred in denying defendant's motion for judgment of acquittal made at the conclusion of all the evidence for the reasons there given.

9. The District Court committed error prejudicial to defendant in admitting any proof by the Government of items A and B of the bill of particulars on grounds of former jeopardy and *res judicata*.

10. The District Court committed error prejudicial to defendant in admitting any proof by the Government as to the item of alleged overstatement

of depreciation on the Henshaw Road property on grounds of former jeopardy and *res judicata*.

11. The District Court erred in denying defendant's motion to dismiss indictment on grounds of *res judicata* and the provision of Rule 48 of the Federal Rules of Criminal Procedure.

12. That under Rule 48 of the Federal Criminal Rules the Stipulation and Order of dismissal of the former indictment constituted a final termination of the prosecution of this defendant on this particular charge, and re-indictment on the same offense violates said Rule 48 and established principles of *res judicata*.

13. The District Court erred in admitting into evidence Government's exhibits Nos. 22 and 24, statements of defendant for there was no sufficient independent evidence aside from defendant's own statements to sustain a conviction, and defendant's motion for judgment of acquittal made before submission of the case to the jury should have been granted.

14. For the same reasons as stated in the paragraph above, the Court erred in refusing to grant defendant's motion for judgment of acquittal notwithstanding the verdict and his motion for a new trial.

15. The District Court erred in admitting the following numbered Government exhibits for the reason that same were either irrelevant, incompetent or no proper foundation was laid for their admission into evidence and defendant was preju-

diced thereby, viz.: Nos. 1, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21 and 23.

Dated this 21st day of April, 1954.

PARKER & MUECKE,  
/s/ By DARRELL R. PARKER,  
Attorneys for Defendant  
Acknowledgment of Service attached.

[Endorsed]: Filed April 21, 1954.

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[Title of District Court and Cause.]

#### DESIGNATION OF ADDITIONAL PORTIONS OF RECORD ON APPEAL

To: The Clerk of the United States District Court  
for the Judicial District of Arizona, and to  
Mr. Claude E. Spriggs, Defendant, and Mr.  
Darrell R. Parker, Attorney at Law, Attorney  
for Defendant.

Plaintiff, United States of America, hereby designates additional portions of the record, in the above-entitled matter, to be contained in the record on appeal:

1. Answer in opposition to motion to dismiss indictment (filed January 7, 1954).
2. Answer in opposition to motion for bill of particulars (filed February 8, 1954).
3. Motion of Plaintiff for re-hearing on defendant's plea in bar (filed March 12, 1954).



4. This additional designation of record.

Dated: April 30, 1954.

JACK D. H. HAYS,  
United States Attorney  
/s/ ROBERT S. MURLLESS,  
Assistant U. S. Attorney

[Endorsed]: Filed April 30, 1954.

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[Title of District Court and Cause.]

### ORDER

Good Cause appearing therefor,

It Is Ordered that the time for filing the Record on Appeal and docketing the appeal herein in the United States Court of Appeals for the Ninth Circuit be, and it is hereby, extended to and including July 11, 1954.

Dated at Phoenix, Arizona, this 14th day of May, 1954.

/s/ DAVID W. LING,  
United States District Judge

[Endorsed]: Filed May 14, 1954.

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[Title of District Court and Cause.]

### ORDER AUTHORIZING WITHDRAWAL OF ATTORNEYS FOR DEFENDANT

Upon motion of Darrell R. Parker of the firm of Parker & Muecke for leave to withdraw as counsel



for the defendant, and the said defendant having consented in writing to such withdrawal.

Now, Therefore, It Is Hereby Ordered that the firm of Parker & Muecke, be, and they are hereby, authorized to withdraw from any further representation of the defendant in the above entitled and numbered action.

Dated this 16 day of June, 1954.

/s/ DAVID W. LING,  
Judge

[Endorsed]: Filed June 16, 1954.

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[Title of District Court and Cause.]

### CLERK'S CERTIFICATE

United States of America,  
District of Arizona—ss.

I, William H. Loveless, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the case of United States of America, Plaintiff, vs. Claude E. Spriggs, Defendant, numbered C-10711 Phoenix, on the docket of said Court.

I further certify that the attached and foregoing original documents bearing the endorsements of filing thereon are the original documents filed in said case, and that the attached and foregoing copies

of the minute entries are true and correct copies of the originals thereof remaining in my office in the city of Phoenix, State and District aforesaid.

I further certify that the said original documents, and said copies of the minute entries, constitute the record on appeal in said case as designated in the Appellant's Designation and in the Appellee's Designation filed therein and made a part of the record attached hereto and the same are as follows, to-wit:

1. Indictment.
2. Defendant's Motion to Dismiss Indictment, filed March 20, 1954.
3. Plaintiff's Answer in Opposition to Defendant's Motion to Dismiss Indictment.
4. Defendant's Plea in Bar.
5. Defendant's Motion for Bill of Particulars.
6. Minute Entry of February 8, 1953 (arraignment).
7. Government's Answer in Opposition to Motion for Bill of Particulars.
8. Bill of Particulars (from United States of America vs. Claude E. Spriggs, No. C-9558 Phoenix) as shown on page 8 of printed Transcript of Record. (Note: This item is contained on page 8 of Defendant's Exhibit D in item 17 below.)
9. Minute entry of February 10, 1954 (plea of not guilty; ruling on defendant's motions).
10. Order granting Plea in Bar in part and denying Plea in Bar in part.
11. Motion of Plaintiff for Rehearing on Defendant's Plea in Bar.

12. Minute entry of March 22, 1954 (Order vacating order of February 25, 1954, pertaining to Plea in Bar).

13. Defendant's Motion to Dismiss (or Quash) Indictment filed March 29, 1954.

14. Minute entry of March 31, April 1, 2 and 5, 1954 (proceedings of trial).

15. Government's exhibits 1, to 5, 7, 9 to 18, and 21 to 24 in evidence.

16. Defendant's exhibit A in evidence.

17. Defendant's exhibits A, B, C, D, E, F and G received in support of Motion to Dismiss Indictment.

18. Verdict.

19. Defendant's Motion for Judgment of Acquittal Notwithstanding the Verdict.

20. Defendant's Motion for a New Trial.

21. Minute entry of April 12, 1954 (sentence proceedings; order denying Motion for Judgment of Acquittal and Motion for New Trial).

22. Judgment.

23. Defendant's Notice of Appeal.

24. Defendant's Designation of Record on Appeal.

25. Defendant's Statement of Points Upon Which Defendant-Appellant Relies on Appeal.

26. Plaintiff's Designation of Additional Portions of Record on Appeal.

27. Order extending time to docket appeal to July 11, 1954.

28. Reporter's Transcript.

29. Order Authorizing Withdrawal of Attorneys  
for Defendant.

I further certify that the Clerk's fee for preparing and certifying this said record on appeal amounts to the sum of \$4.00 and that said sum has been paid to me by counsel for the appellant.

Witness my hand and the seal of said Court this  
28th day of June, 1954.

[Seal]            /s/ WM. H. LOVELESS, Clerk

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In the District Court of the United States  
for the District of Arizona

No. C-10711-Phx.

UNITED STATES GOVERNMENT,

Plaintiff,

vs.

CLAUDE E. SPRIGGS,

Defendant.

REPORTER'S TRANSCRIPT

The above entitled and numbered cause came on duly and regularly to be heard in the above entitled court before the Honorable Claude McColloch, presiding with a jury, commencing at the hour of 12:55 o'clock p.m., on the 31st day of March, 1954.

The plaintiff was represented by Robert Murlless, Assistant United States Attorney.

The defendant was present and represented by Darrell R. Parker, attorney at law, Phoenix, Ariz.

Thereupon the following proceedings were had:

The Clerk: Number C-10711, Phoenix, the United States of America, plaintiff, versus Claude E. Spriggs, defendant, for trial.

Harold T. Shortridge was sworn in as official reporter. [1\*]

Thereupon the following proceedings were had:

Mr. Parker: At this time I think I should be a bit derelict in my duty if I did not call the fact that there has been a motion predicated upon the doctrine of *res judicata* here and not disposed of. On the basis of the matters therein set forth and the general rule of *res judicata* I object at this time to counsel's statement or to any proceeding under in this indictment on the ground that that the whole or a substantial portion of this indictment has heretofore been adjudicated.

The Court: I reserve a decision until the later statements of the case.

Mr. Murlless: Counsel and ladies and gentlemen: At this point in the trial the prosecution—it becomes appropriate since time immemorial that the lawyer that has affirmative of the case have an opportunity to state what the evidence is to the jury, but to state what he, also, believes the Government's case or the case that is about to be proven; what he expects that it will prove in the case. And it is for this purpose principally and that it may help the jury early in the hearing of the testimony to organize it. It may give them a

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\* Page numbers appearing at top of page of original Reporter's Transcript of Record.



framework upon which to better judge it, and it is in this spirit solely I'd like to state to you what I expect that the Government's [2] case will prove. I am not stating what the facts are; they come to you solely from the witness chair. But in this case, the United States of America versus Claude E. Spriggs, the Government expects to prove an attempt to evade income tax for 1947; that the attempt was three-fold, and that with respect to two of the items they are classified, and the Government expects to prove that they were items of unreported income. The Government expects to prove unreported income from taxable gains situation, the sales of capital assets; that two of the items about which evidence will be offered here are of that variety. The Government expects to satisfactorily prove that in September of '47 a piece of property at 2520 North Third Street was purchased from this taxpayer from Mrs. Katherine Moss Fisher for approximately \$2,000; that he had certain other costs in connection with that property, but that within three or four months, in 1947 again, he sold the property for some \$2,750, with an item of added cost, but with a taxable gain, a net profit and a taxable gain, of \$450, which with intent to evade the proper amount of his tax for the year 1947 he didn't report in his income tax return for that year; that of that same class and with respect to that [3] same kind of a transaction, the Government expects to prove that with respect to a piece of property purchased by the defendant, Claude E. Spriggs, sometime early in 1945, located

at 1417 to 25 East Washington Street, he purchased from a man by the name of Eglar for some \$5,500; that in, on August 14, or thereabouts in 1947, he sold that piece of property to some people by the name of Arreola for some \$8,500; that on August 14, 1947. The Government expects to prove that there was a profit to him in that regard of a long term nature in excess of \$3,300, and one half thereof was a taxable gain, and that with intent to deprive the Government of the fair amount of tax upon his income for that year, and that part of it, the defendant, Claude E. Spriggs, failed to put that second taxable gain into his income tax return for the year 1947. The Government expects to prove the third of these items to be an overstatement of depreciation. The Government expects to prove that the defendant was in two businesses at least; that of practicing law, and that of the ownership of real property for lease and that in connection with his business is the owner of rental property, he was authorized in his tax return to take certain sums as expenses of operation, known more particularly and technically as depreciation, and that he takes that upon the basis of what it, the cost of the improvements, that he holds for rental purposes are; but this defendant in his tax return of 1947 over-stated the cost to him of certain, a certain piece of property in a sum in excess of \$20,000, approximately, as much again as its actual cost to him with the intent and for the purpose of reducing the gross or the gross profit from that business, deducting that as an expense to the

end that some \$4,000 in depreciation was taken when something approximating \$2,900 should have been taken. Now, when this on so many facts \$2900. should have been taken. These things the Government expects to prove. At the end of that time, after you have given it your conscientious consideration, in view of the oath you have taken, the Government will ask you to bring in a verdict of guilty in this regard against the defendant, Claude E. Spriggs.

Mr. Parker: Upon Mr. Murlless's opening statement I move your Honor to declare a mistrial for the reason that the Fisher and Eglar transactions are both matters upon which adjudications have previously been had favorable to this defendant. I separately make the same motion upon the same [5] ground with respect to the depreciation item and then independently, your Honor, I move that the Court instruct the Jury now to return a verdict of acquittal for the defendant upon the ground that the plaintiff's opening statement—I mean the Government's opening statement—as announced by Mr. Murlless does not contain the essential elements of a *prima facie* case.

The Court: Motion denied. Do you wish to make your statement?

Mr. Parker: We waive our statement.

The Court: Put on your first witness.

Mr. Murlless: Mr. William McRae.

## WILLIAM McRAE

was called as a witness on behalf of the Government, and being first duly sworn, testified as follows:

Mr. Parker: If your Honor please, at this point defendant objects to the introduction of any evidence in support of this indictment upon the grounds set forth in the motion to dismiss the indictment on account of prior adjudication.

The Court: Objection overruled.

## Direct Examination

Q. (By Mr. Murlless): State your name. [6]

A. William McRae.

Q. What is your work, sir?

A. I am Assistant District Director of the Internal Revenue Office, Phoenix, for the District of Arizona.

Q. With respect to the State of Arizona, what is the collection district of Arizona?

A. The entire State of Arizona is involved in this District.

Q. And for how long has that been your work?

A. More than 20 years.

Q. And for how long have you lived in the city of Phoenix?

A. About 29 years.

Q. And in your official capacity as Assistant Director in the District of Arizona, did you have occasion in connection with this case to be subpoenaed to bring certain official records of the Office of the Director of Internal Revenue for the District of Arizona?

A. I did.



(Testimony of William McRae.)

Q. And what are those records in a general way, if you will tell the jury.

A. I have been subpoenaed to bring the income tax return filed by Claude E. Spriggs for the years 1946, 1947, 1948 and 1949 and 1950. [7]

Q. And each of those returns that you have brought are, do they appear to, on their face, to be a return of the, a resident of the District of Arizona? A. They do.

Q. Officially to be lodged in the Director's Office here? A. Yes.

Q. And you are custodian of those official records? A. Yes.

Q. Would you hand me Federal Income Tax return for 1946, please? May this be marked, if your Honor please, for identification?

(Whereupon the document was marked as Government's Exhibit 1 for identification.)

Mr. Murlless: I hand to you, Mr. McRae, Government's 1 for identification and ask you if that is the first return about which you speak, an official document of the Director of the Internal Revenue for the District of Arizona? A. Yes.

Q. With reference to a man by the name of Claude E. Spriggs? A. It is.

Q. And will you hand me the second of the [8] documents about which you have just testified. May this document be marked for identification, if your Honor please.

(Whereupon the document was marked as Government's Exhibit 2 for identification.)



(Testimony of William McRae.)

Mr. Murlless: I hand you Government's 2 for identification, Mr. McRae, and ask you, generally, what that is?

A. Income tax return filed by Claude E. Spriggs on form 1040 for the year 1947.

Q. Now, would you hand me the third of the documents about which you have just—may this be marked, if your Honor please, Government's 3 for identification.

(Whereupon the document was marked as Government's 3 for identification.)

Mr. Murlless: I hand you Government's 3 for identification, Mr. McRae, and ask you, generally, what that is.

A. It is the income tax return filed by Claude E. Spriggs for the year 1948 on Form 1040.

Q. And would you give me the fourth of the documents which you stated that you brought to the Court?

A. May I comment that there is also an **amended** return attached to the '48. [9]

Q. I see; and they were all identified there as Government's 3 for identification, is that the condition?      A. Yes.

Q. Very well, sir. Now, each of those three exhibits, Government's 1, 2 and 3 for identification, is an official Governmental record in the office of the Director of the Internal Revenue, the custody of them being appropriately in you as you are Assistant for the purpose of this trial?

A. That is right.

(Testimony of William McRae.)

Q. Now, would you take Government's Exhibit 1 for identification and—you hold it, if you will, Mr. McRae—may that be stricken. Government's 2 for identification. What is the name of the taxpayer there, Mr. McRae?

A. Claude E. Spriggs.

Q. Does it show an address?

A. The address is 730 West Coronado Road, Phoenix, Maricopa County, Arizona.

Q. It appears to be an address within the collection district of Arizona?

A. That is correct.

Q. And by whom is it signed?

A. Claude E. Spriggs.

Q. And this is the return, the official [10] record which you have stated comes into your custody and your capacity as Assistant to the Director of Internal Revenue for Arizona?

A. That is right.

Q. Move its admission in evidence, if your Honor please.

(Thereupon the document was handed to counsel for defendant.)

Mr. Parker: I object to it, your Honor, on the ground that the matter has already been adjudicated.

The Court: Admitted. Number 2 received.

Mr. Murlless: I hand you Government's 2 in evidence, Mr. McRae; will you state to the jury if it is reflected there upon what basis was Claude E. Spriggs the taxpayer?

(Testimony of William McRae.)

Mr. Parker: If your Honor please, the exhibit speaks for itself.

The Court: You may answer.

A. The tax return discloses income from certain sources as stated in the return.

Q. For what years? A. Year 1947.

Q. Calendar, or fiscal? A. Calendar.

Q. And will you state to the jury the source [11] of the income reflected there?

A. It was from two sources—rent on houses, and fees from the practice of law.

Q. And to aggregate adjusted gross income of how much?

A. From rentals, \$11,471.30, and from the practice of law, \$1,753.72.

Q. From the 11, the excess of \$11,000, which you state is the aggregate of the return from the business of rental of houses, to what net profit did the business of rental of houses go as reflected by that return?

A. The return discloses net return at that time is \$2,133.74.

Q. The aggregate was reduced from \$11,000 to \$2,000 some? A. Yes.

Q. What were the items to reduce it to that degree?

Mr. Parker: Perhaps I am in error, but I'm unfamiliar with the procedure by which a witness explains his version and interpretation of an exhibit in evidence, and I again object to this line of questioning.

(Testimony of William McRae.)

The Court: You may continue.

A. Depreciation. \$5,445.50. Repairs \$1,520.11.  
Other expenses \$2,154.95.

Q. Now, there was another source of income about which you stated, the income from the practice of law, did you state? A. Yes.

Q. What is the aggregate of that?

A. \$1,753.72.

Q. And the net, if you will, please?

A. \$467.58.

Q. From the face of the return will you state to the jury whether any tax was paid?

A. No tax was paid on the return.

Q. Thank you, very much, sir. Your witness.

#### Cross Examination

Q. (By Mr. Parker): No questions, Mr. McRae.

Mr. Murlless: We'll need this witness at a later time, but for the time could he be excused?

The Court: Yes.

#### KATHARINE MOSS FISHER

was called as a witness on behalf of the Government, and being first duly sworn testified as follows: [13]

#### Direct Examination

Q. (By Mr. Murlless): Will you state your name, please?

A. Mrs. Katharine Moss Fisher.

Mr. Parker: I must object to any testimony from this witness on the ground that the indict-

(Testimony of Katharine Moss Fisher.)

ment is a matter upon which the defendant has heretofore been acquitted.

The Court: You may testify.

Mr. Murlless: You may testify.

A. Katharine Moss Fisher.

Q. And where do you live?

A. 334 East Verde Lane.

Q. Phoenix? A. Yes.

Q. And for how long have you lived in Arizona? A. Thirty years.

Q. Then you did live here in 1945, '47?

A. Yes, sir.

Q. Do you know the defendant, Claude E. Spriggs, that sits to the table behind me to the right side? A. Yes.

Q. You do know Mr. Spriggs? A. Yes.

Q. In what connection were you, did you make his acquaintance? [14]

A. He bought a lot from me.

Q. And will you state to the jury the location of that lot, generally, if you can, or its address, or however you identify it.

A. It's on North Third Street. It's north of the, Ashland, along the alley. It's Eastwood Place. I don't know legally. It's 2526 North Third.

Q. About what time did you make this sale to Mr. Spriggs about which you have just spoken?

A. Well, within one day, I know, because I checked my bank records of September 22, 1947.

Q. And what, generally, was the condition of this lot at that time; was it improved, or vacant?



(Testimony of Katharine Moss Fisher.)

A. Vacant.

Q. Vacant?           A. Unimproved.

Q. Where did you meet Mr. Spriggs?

A. When I met him down town at the title company.

Q. For the purpose——?

A. To finish the business on selling the lot.

Q. How much did he pay you for that lot?

A. \$2,000.

Q. And that was on or about the 22nd day of  
[15] September?           A. 1947.

Q. Do you at this time have a memorandum or anything concerning that transaction, Mam?

A. No.

Q. How do you make a recollection of the amount of \$2,000, if you will tell the jury.

A. Well, I didn't have it and I had to call the bank and ask them to search my deposit records, and I went through the drawers until I found the slips and notice and I checked it with the bank.

Q. Thank you very much. Your witness.

#### Cross Examination

Q. (By Mr. Parker): Mrs. Fisher, did I understand that you have resided in Arizona for 30 years?   A. Correct.

Q. And how long have you resided in Phoenix?

A. Same length of time.

Q. Same length of time; then you were in Phoenix during the entire year of 1951; at the time that this case was formerly tried you were in

(Testimony of Katharine Moss Fisher.)

Phoenix at that time, were you not? I'll make it more specific: were you in Phoenix on the 14th day of November, 1951, to the best of your recollection?

A. Not one—November, 1951; I may have been visiting in Texas.

Q. You may have been visiting in Texas? Did you visit in Texas during the month of November, 1951, to your positive recollection? What I'm getting at, Mrs. Fisher, I want, I don't want to mystify you, I just want to get the particulars——

Mr. Murlless: Object to any questions. I don't know what he's trying to get at, but if it's what I think, it is irrelevant, immaterial and inconsequential.

The Court: Overruled.

Mr. Parker: At the question of whether or not you were here in Phoenix available to the Government when this case was tried before, and as I have already pointed out to you, the trial according to the record I have here, began on the 14th day of November, 1951. Were you here at that time?

A. I have told you to the best of my ability I think I was visiting in Texas.

The Court: Do you remember the trial of this man before? Did you ever hear——?

A. Last year the only time it's ever come to my attention when a paper was served.

The Court: That's not the early part of '51.

Mr. Parker: You weren't subpoenaed?

A. No, last year.

Q. When you, were you first contacted by some-

(Testimony of Katharine Moss Fisher.)

one in the Internal Revenue Department concerning Mr. Spriggs—how long ago, or how many years ago?

Mr. Murlless: To which we make the same objection.

The Court: Overruled.

A. Within the last year and a half I was served to be at that in Tucson, but my mother had broken her hip and I couldn't go.

Q. This wasn't in Tucson. You are referring to a certain Grand Jury. I see. You weren't subpoenaed or contacted by the Government prior to November 14, 1951?

The Court: No, she said a year and a half ago.

A. I would have known the case if I had.

Q. In connection with the sale of this vacant lot is it not a fact that you did not pay any of the costs or expenses or escrow fees or anything of that sort in connection with that transaction?

A. That's a true statement.

Q. You didn't pay any? [18]

A. I did not.

Q. That's all.

Mr. Murlless: Thank you very much, Mam. Could this witness be excused, if your Honor please?

The Court: Yes.

**H. M. VAN DENBURGH**

was called as a witness on behalf of the Government, and being first duly sworn testified as follows:

**Direct Examination**

Q. (By Mr. Murlless): Will you pronounce your name? A. H. M. Van Denburgh.

Q. What is your work? A. Lawyer.

Q. And without——

Mr. Parker: Excuse me. The same objection to the testimony.

The Court: Same ruling.

Q. And do you live in the city of Phoenix?

A. Yes.

Q. How long have you lived here?

A. About 35 years.

Q. Know the defendant, Claude E. Spriggs?

A. Yes.

Q. And in what connection? [19]

A. I know him as a lawyer; in addition to that I bought a lot.

Q. When did you buy that lot, sir?

A. Went into escrow October 30, 1947.

Q. And would you—do you have papers that show the legal description of the lot?

A. Lot 6 and the south four feet of lot 5, Eastwood Place, except the east ten thereof.

Q. Do you recall its approximate address?

A. Yes.

Q. Will you state it to the jury——

A. It's on the west side of Third Street half a block south of Virginia on the Alley and I think

(Testimony of H. M. Van Denburgh.)

the street, first street, south of Virginia parallels Ashland, so it would be a half a block south of Ashland and Virginia.

Q. Could you fix an approximate street number?

A. 2500 and—I don't have that street number.

Q. Do you know whether or not it is the same lot about which Mrs. Fisher was testifying?

A. Yes.

Q. Now, you were requested to bring papers in this regard. A. Yes.

Q. Do you have any that you could—— [20]

A. Yes, I have the escrow instructions under which the lot was purchased. Issued by the title company.

Q. May I have those for the purpose of evidence in this case? I hadn't gotten to talk to you before, sir. A. Yes.

Q. May this be marked for identification, if your Honor please.

(Whereupon the documents were marked as Government's Exhibit 4 for identification.)

Q. I hand you Government's Exhibit 4 for identification, Mr. Van Denburgh, and ask you what that is?

A. These are what is commonly known as escrow instructions, signed by Mr. and Mrs. Spriggs and by me at the office of the Arizona Title Guarantee and Trust Company and at the time I purchased that lot.

Q. And that was sometime——

A. October 30, 1947.



(Testimony of H. M. Van Denburgh.)

Q. And were you present when the signatures of Mr. Spriggs was placed upon it? A. Yes.

Q. And that of his wife? A. Yes. [21]

Q. And this is the transaction with respect to which you have just testified concerning a lot at 2526 North Third Street in Phoenix, Arizona?

A. If that's the correct number. I believe it is.

Q. All right, sir; it's somewhere out there north of Virginia on——

A. South of Virginia on the alley on the west side of Third Street.

Q. And this Government's 4 which you have just given to me represents escrow instructions with respect to that transaction? A. Yes.

Q. Move its admission in evidence as Government's 4 for, in evidence.

Mr. Parker: The only objection is the general objection of previous adjudication.

The Court: Admitted.

Mr. Murlless: I hand you Government's 4 again, Mr. Van Denburgh, and ask you for the lot which is described there, and would you state what its legal description is again, please?

A. Lot 6 and the south 4 feet of lot 5, Eastwood Place, except the east ten feet thereof.

Q. With respect to that lot, how much were you paid in that transaction? Rather you paid?

A. I paid \$2,750.

Q. Can you tell from Government's 4 in evidence how much of that \$2,750 Mr. Spriggs received; can you tell that?

(Testimony of H. M. Van Denburgh.)

A. He received it all except, well, eleven—I paid one twentieth of the 1947 taxes and Mr. Spriggs paid eleven twentieths. He paid the usual title charges.

Q. And it doesn't show exactly what they were?

A. No.

Q. Thank you very much. In that connection, sir, the records of instructions, being Government's 4 in evidence, did you receive anything more that could be characterized as consideration for your \$2,750 other than——

A. No, sir; Mr. Spriggs had plans drawn which, or by an architect to build some rental units on the property and he delivered those to me at the time I purchased the lot from him.

Q. And did you receive anything else that could be characterized as consideration for that sum of money?

A. No.

Q. Thank you very much. Your witness. [23]

#### Cross Examination

Q. (By Mr. Parker): Mr. Van Denburgh, you are a lawyer?

A. Yes.

Q. And you have been a member of the bar of the State of Arizona for how many years?

A. Thirteen.

Q. And you are also engaged, are you not, in some real estate activities?

A. No; no, my wife is a real estate broker—I have never engaged myself in it.

(Testimony of H. M. Van Denburgh.)

Q. You have practiced law and she deals in real estate?  
A. Well, yes.

Q. Well, now, you were in Phoenix; you have been in Phoenix continuously, have you not, for the past ten or more years?

A. With the exception possibly of a summer vacation. That's right.

Q. I think that's all. You were also called, weren't you, sir, at that time, weren't you?

A. I don't understand that.

Q. You were subpoenaed?

A. Which time?

Q. The prior time about which he's asked these other witnesses.

A. I think; yes, I testified before the petit jury and I think I have been before the Grand Jury [24] twice.

Q. And one other thing, if I might go back, if your Honor please; that lot, what was its condition when you purchased it?

A. Vacant lot.

Mr. Parker: I object as improper redirect.

The Court: Answer.

Q. Very well, sir. Thank you very much. May this witness, too, be excused, if your Honor please?  
Mr. Jacob Eglar.

(The witness being duly paged did not answer.)

Mr. Murlless: Mr. Joseph Cohen.

JOSEPH COHEN

was called as a witness on behalf of the Government, and being first duly sworn testified as follows:

Direct Examination

Q. (By Mr. Murlless): Again, sir, may I trouble you—— A. Joseph Cohen.

Q. Where do you live?

A. 6111 North Seventeenth Avenue.

Q. What is your work? A. Real estate.

Q. How long have you lived in Phoenix? [25]

A. Twenty years.

Q. And that's Phoenix address—6111 East Seventeenth Avenue? A. Yes, sir.

Q. And you have lived in Phoenix 20 years?

A. Yes.

Q. What is your work? A. Real estate.

Q. What was your work in 1945?

A. Real estate.

Q. Do you know the defendant, Claude E. Spriggs? A. Yes, sir.

Q. And in what connection do you know him?

A. By selling him a piece of property.

Q. And what was the general nature of that property; what kind of property was it?

A. It was on Washington on the 1400 block about several cottages; it was very old ones. 1400 East Washington, yes.

Q. Was it your own?

A. No, somebody else.

Q. Who? A. Jacob Eglar.

Mr. Parker: I want to object on the ground

(Testimony of Joseph Cohen.)

that this testimony clearly applies to a matter [26] upon which the defendant has been exonerated on trial in court.

The Court: You may answer—continue.

Q. Jacob Eglar; was the answer that?

A. Yes.

Q. Where do you live, or he live, at that time?

A. Jacob Eglar?

Q. Yes.

A. A business on east Van Buren.

Q. Was he well or sick?

A. Pretty sick.

Q. Sick man at that time? A. Yes, sir.

Q. Do you know where he lives now?

A. I don't know where he lives now.

Q. Now, in this connection, what part did you take in this transaction?

A. I was a salesman.

Q. Salesman? A. Yes, sir.

Q. Who came to you in its regard first?

A. Jacob Eglar came to the office. A Mr. Oldakers, he was the broker.

Q. Where?

A. First National Bank Building.

Q. And about when did Mr. Spriggs come there, [27] if you can recall.

A. Of the year of 1945.

Mr. Parker: If I understand him he didn't testify that Mr. Spriggs testified that.

A. I didn't say that.

Mr. Murlless: The question was, "When did he



(Testimony of Joseph Cohen.)

come there?" Will you state what happened and how you first met Mr. Claude Spriggs?

A. Mr. Jacob Eglar came into the office to sell a piece of property for the price of \$6,000 and they took his listing and put an ad in the paper and the office received a call from Mr. Spriggs and I went up to his office; I could recall it right, and I made a deal with him of \$5,500, a cash deal.

Q. And did you have occasion to go with him to the title company at a later time?

A. I believe when he came to sign the papers and pay the final, finally, I believe I met him there.

Q. Well, then, finally he did come to the office of Mr. Oldaker?

A. No; the title company.

Q. What was the nature of that; would you describe it generally for the jury, the nature of the property? [28]

A. As I say, it was a lot and very old cottages, occupied by some and some vacant.

Q. You stated the address?

A. In the 1400 block, East Washington, on the south side of the street.

Q. Have you had occasion to search the records in this regard subsequent to this happening?

A. I did.

Q. Will you state what the legal description of that property is, if you know?

A. It is lot 7 and 8 and block 15, Collins Addition.

Q. Is that an addition to the city of Phoenix?

(Testimony of Joseph Cohen.)

A. Yes.

Q. You say that Mr. Eglar was sick at that time?

A. He wasn't sick in bed, but he was an old and sick man.

Q. As I understand it you took care of all of the money transactions.

A. The title company did; I took the first deposit of \$1,000 and made it out to the title company and the deal went through and Spriggs made a check of \$4,500 to cover.

Q. Were you there when the escrow was closed?

A. Yes. [29]

Q. And you observed the payment of that piece of property of \$1,000 and \$4,500?

A. That's right.

Q. And you have the memo or contract or copy of it?

A. The memo and contract were all the papers to Mr. Oldaker—he was real estate man and he kept it and I don't know whether he is alive or not.

Q. All right, sir. Your witness.

#### Cross Examination

Q. (By Mr. Parker): Mr. Cohen, have you ever previously testified concerning this matter in a case between the Government and Mr. Spriggs?

A. Yes, sir; the Grand Jury in Tucson.

Q. I mean a trial? A. No, sir.

Q. You weren't called on a previous trial in this case? A. No, sir.

(Testimony of Joseph Cohen.)

Q. Were you in Phoenix?

A. A year, 1951, yes, sir.

Q. Where were you living at that time?

A. 911 North Second Street.

Q. Where do you live now? [30]

A. At 6111 North Seventeenth Avenue.

Q. Are you still in the real estate business?

A. Yes, sir.

Q. Who are you with now?

A. Operating my own business.

Q. How long have you been operating your own business?      A. 1941 started.

Q. You have been operating your own business for the past 12 years or more?      A. Yes, sir.

Q. What is your business called?

A. No name; just my own few businesses, pieces of property.

Q. I see. Were you subpoenaed for the previous trial in this case back in November, 1951?

A. Never was.

Q. Now, Mr. Cohen, did I understand you to say at that time you went more than once to the title company in the presence and with Mr. Spriggs?      A. No, sir; only once.

Q. Just one time?      A. That's right.

Q. And isn't it a fact that at the time you went to the title company and its escrow department with Mr. Spriggs the one and only time you went [31] was when the escrow was opened up, not when it was closed?

(Testimony of Joseph Cohen.)

A. I believe the opposite; I can't recall. I think at the closing.

Q. You are quite sure it was?

A. No; it was nine years ago.

Q. It's quite awhile ago, but you think at the closing?

A. I think it was at the closing. Yes.

Q. Now, as I understand, or understood you awhile ago, you said that Mr. Spriggs paid a down payment, if I understand you, into escrow, a thousand dollars? A. Yes.

Q. And then when the thing was closed he paid \$4,500? A. That's right.

Q. Did both of those go through your hands?

A. No; one; the other went through the title company.

Q. The other not through you? A. No.

Q. But the first was? A. Yes.

Q. Was that check of Spriggs delivered by you to the escrow or title company? [32]

A. Yes, with the papers.

Q. Isn't it a fact that you delivered that thousand dollar check, that first check, at the time the escrow was opened?

A. I don't understand it.

Q. At the time it was first set up?

A. That's right.

Q. Yes, that's the time you delivered that thousand dollars and that's the time you went to the title company with Mr. Spriggs, isn't it?

(Testimony of Joseph Cohen.)

A. This I don't remember, whether I went or alone, but at the closing I am sure I was there.

Q. Are you sure you were just there once?

A. I think with Mr. Spriggs once.

Q. As a matter of fact you only went there just one time, didn't you?

A. That's what I think.

Q. So it couldn't be at both the opening and closing of the escrow? A. No.

Q. Now, you stated that the property that was involved here was, I don't recall your words, very old property? A. That's right.

Q. What was it, a dwelling house?

A. It was 8 or 9 cottages, very run down [33] condition.

Q. Well, now, wouldn't—cabins or shacks?

A. Cabins; a better word would be shacks.

Q. A bunch of shacks? A. That's right.

Q. And they were very run down, in a terrible state of disrepair?

A. They were; people lived there.

Q. Well, out in that area some people live in almost anything, don't they? A. Sure.

Q. And they were in bad shape?

A. They were in bad shape, that's right.

Q. That's all.

### Redirect Examination

Q. (By Mr. Murlless): I'm not sure that you were understanding, Mr. Cohen; was it your statement that there were two different payments that



(Testimony of Joseph Cohen.)

were made, one of them a thousand dollars and one for \$4,000?      A. \$4,500.

Q. Yes, sir; with respect to the first one, was your statement it went into your hands and was delivered to the title company?

A. Yes, sir. [34]

Q. Now, do I understand you were present when the \$4,500 payment was made?

A. To the title company.

Q. You were there with Mr. Spriggs—when you said you were there only once?

A. Spriggs?

Q. You mean with Mr. Spriggs?

A. Yes, sir.

Q. May this witness, too, be excused?

(A short recess was taken at 2:27 o'clock p.m.)

After recess, all parties as heretofore noted by the Clerk's record being present, the trial was resumed as follows:

Mr. Murlless: Mrs. Carlotta Arreola. Your Honor, it appears this lady will need an interpreter; although she understand English she has difficulty in speaking it.

(Thereupon Mr. Dwayne Rogers was sworn in as official interpreter of the Court.)

CARLOTTA ARREOLA

called as a witness on behalf of the Government, and being first duly sworn through an official interpreter, testified as follows: [35]

Direct Examination

Q. (By Mr. Murlless): If your Honor please, we have some three witnesses we won't be able to use this afternoon. Might they be excused—Mr. Fageburg, Mr. Struckmeyer, Mrs. Ross.

The Court: They are directed to be in Court at one o'clock tomorrow afternoon.

Mr. Murlless: What is your name, please?

A. Carlotta G. Arreola.

Q. And where do you live, Mrs. Arreola?

A. In Phoenix.

Q. For how long have you lived here?

A. Twenty years.

Q. And what is your husband's name?

A. Jesus Arreola.

Q. And do you know the defendant, Claude E. Spriggs, who sits behind me on the right hand side of the table? A. No.

Q. Do you know him, of him, the name Spriggs?

A. Yes.

Q. And in what connection, do you know that name?

Mr. Parker: I object to that as immaterial.

The Court: How does she know the name?

A. Because my husband and I bought a piece [36] of property from him.

Q. And about when was that—what year?

(Testimony of Carlotta Arreola.)

A. In 1947.

Q. And what month, if she can tell?

A. In August of 1947.

Q. In August of 1947. Where was the property located?

A. The lot is situated in the fifteenth block; it is block number 7 and 8 and she gave me the name of it but I couldn't understand it.

Q. What is the street address?

A. East Washington.

Q. East Washington Street?

A. Yes, sir, he is.

Q. About where would it be?

A. 1400. 1423 Washington.

Q. You state that the sale was made to you and to your husband? A. Yes.

Q. And your husband was served with a subpoena in this case, was he not, Mam?

A. Yes.

Q. And where is he?

A. He's in Nogales, Sonora.

Q. In Mexico; in the Republic of Mexico?

A. Yes. [37]

Q. And will you state why you came and your husband did not come.

A. Because he was busy and I had all the papers in California; I come from California.

Q. And do you know about this monetary transaction in connection with that property?

A. Yes.

Q. And did you bring certain papers with you?

(Testimony of Carlotta Arreola.)

A. Yes.

Q. Would you take them out, please?

Mr. Parker: While that's being done I wish to renew the same objections as before.

The Court: Same ruling.

Mr. Murlless: Now, from the papers you have there, can you tell the jury what is the legal description of the property.

A. Blocks 7, 8, Collins Addition.

Q. What is it you're reading from, Mam?

A. It's the script or writing from the buying and selling of—

Q. This property? A. Yes.

Q. Does it also state at the top "escrow instructions?" A. Yes.

Q. Could I take them from you—could I have [38] them for evidence here in Court? May this be marked for identification, if your Honor please?

(Whereupon the documents were marked as Government's Exhibit 5 for Identification.)

Mr. Murlless: I hand you Government's 5 for identification and ask you if that is the escrow instructions with respect to your purchase of this property in Collins Addition from Mr. C. E. Spriggs? A. Yes.

Q. What date?

A. The 14th of August.

Q. 1947? A. Yes, sir.

Q. Move its admission in evidence, if your Honor please.

(Testimony of Carlotta Arreola.)

(Thereupon the document was handed to counsel for the defendant.)

Mr. Parker: I object to it; there's no proper foundation laid. No showing that this was ever executed by the defendant or any of the other sellers named on the face of the sheet. I don't think it's properly admissible into evidence at this time.

The Court: Denied. [39]

Mr. Murless: Will you state the circumstances under which you understood the money transaction and your husband did not in this regard.

Mr. Parker: I don't understand that question.

The Court: You may answer it.

A. We bought it from a real estate. It was a real estate company that made us the sale.

Q. And you supervised the money, is that the case?

Mr. Parker: I object to that as leading and suggestive.

The Court: Overruled.

A. Yes.

Q. Very well; I hand you Government's Exhibit 5 in evidence and ask you how much did you pay for the property that's represented there?

A. \$8,500.

Q. And how was that paid, if you know?

A. The first payment was \$4,000.

Q. And to whom was it made?

A. My husband paid it to the real estate who made the sale.

Q. Was it in cash or how was it?



(Testimony of Carlotta Arreola.)

A. When my husband made the deal I wasn't present, but I believe it, he did it by check.

Q. And how was the other \$4,500 paid? [40]

A. We paid it to the Valley Bank.

Q. Do you know, was it under a mortgage in that connection? A. Yes.

Q. And for how much was the mortgage?

A. \$4,500.

Q. And do you have a copy of that mortgage, Mam? A. I think it's this (indicating).

Q. You have handed me another document. May it be marked for identification, if your Honor please?

(Whereupon the documents were marked as Government's 6 for identification.)

Mr. Murlless: I hand you Government's 6, which is the last document you have handed me, Mrs. Arreola, and ask you, what is that?

A. It's a mortgage.

Q. Now, would you read the face of it to her. I—It reads "Satisfaction of Mortgage." It's not the mortgage, but is a satisfaction of mortgage, is that right? A. Yes.

Q. Is it the mortgage with respect to which you have just testified? A. Yes. [41]

Q. Among your papers may I look to see if there is a copy of the mortgage (handed to counsel). Do you have any other papers you have presented here to me with a third paper? Is it headed "Closing Escrow Instructions?" A. Yes.

(Testimony of Carlotta Arreola.)

Q. Thank you; may this be marked for identification, if your Honor please?

(Whereupon the document was marked as Government's Exhibit 7 for identification.)

Mr. Murlless: I hand you Government's Exhibit 7 for identification and ask you what that is. Does it refer to the property that you have just testified about? A. Yes.

Q. Will you examine it, Mam, so that you are satisfied that it does refer to that same deal. May it be read to her, if your Honor please, if there is a understanding.

The Court: If she says it refers to it.

A. Yes, sir.

Q. And this is a part of the same transaction and represents the escrow instructions at the time you purchased the land from Mr. Spriggs? [42] A part of the same transaction about which you have testified of an aggregate of \$8,500, a sale of property to you from Mr. Spriggs? A. Yes.

Q. Submitted for evidence, if your Honor please.

(Thereupon the document was handed to counsel for the defendant.)

Mr. Parker: If your Honor please, I object to this on the grounds there is no proper foundation laid for it.

The Court: Admitted.

(Whereupon the document was marked as Government's Exhibit 7 in Evidence.)

Mr. Murlless: Have you paid off the obligation with respect to that transaction? A. Yes.

(Testimony of Carlotta Arreola.)

Q. And about when was that accomplished, if you know?      A. What?

Q. The completion of the payment of the mortgage.

A. I paid the bank in—this is the payment I made and it reads like this—“This man is the one who paid it.”

Q. That man's name being Harry C. Hatcher?

A. He paid it.

Q. He made the last payment?      A. Yes.

Q. Now, how was that done?

A. Between my husband and this man, because we couldn't—this man paid the balance that we had in the bank.

Q. And you made a new mortgage to him?

A. Yes.

Q. To Mr. Harry C. Hatcher?

A. Yes.

Q. And is that the note that you gave him?

A. Yes.

Q. For the money that he paid to Mr. Spriggs on the other transaction.

Mr. Parker: There is no evidence that Mr. Hatcher or these people paid any money to Spriggs and I object to counsel's form of the question.

The Court: You may answer the question.

A. This man did all the arranging of the deal and he sent us this paper.

Q. Very well.

Mr. Parker: May I inquire if the paper being

(Testimony of Carlotta Arreola.)

referred to, if this paper was marked for identification.

Mr. Murlless: Sorry, it wasn't. May this be [44] marked for identification if it will serve your purpose.

(Whereupon the document was marked as Government's 8 for identification.)

Mr. Murlless: Now, I don't know if we wish to go further, but with respect to Government's Exhibit 8, is that the paper you refer to as being signed by you, a note to Mr. Harry C. Hatcher?

A. Yes.

Q. If that will serve counsel any purpose, if your Honor please.

The Court: He wants to see it.

(Thereupon the document was handed to counsel.)

Mr. Murlless: At the time that you bought the property, Collins Addition property?

A. Yes.

Q. Of what did it consist; what was there?

A. The buildings in——

Q. ——Yes.

A. ——five small wooden houses.

Q. And what else, if anything?

A. There wasn't anything else—one garage.

Q. And of what construction was it?

A. Wood.

Q. How big were the houses to the best of your [45] ability?

(Testimony of Carlotta Arreola.)

A. They are very small and have one room and a small kitchen.

Q. Only one room and a small kitchen; was that——

A. There was another house a little bit larger than that with three rooms.

Q. Did it have a bedroom?

A. Yes; the large one did.

Q. And a bathroom?           A. Yes.

Q. How many of them had baths?

A. All of them.

Q. And of what did the bathroom consist?

A. Latrine and everything that the bathroom usually has.

Q. A tub?           A. Yes.

Q. Some of them were two rooms and there was one of them that was three rooms, is that correct?

A. There is only one that had, has three rooms.

Q. And the other four, how many rooms did they have?

A. One room, the kitchen and a porch.

Q. Did you buy them furnished?

A. They had very little furniture. They had [46] only stoves.

Q. Anything else besides stoves?

A. No.

Q. Bed?           A. No.

Q. When you purchased them they had stoves——

A. When I received the house they didn't have anything, just the stoves.



(Testimony of Carlotta Arreola.)

Q. And when was that, Mam?

A. It was in September or October; I don't remember very well, but it was just about the time the year was coming to a close.

Q. Which year; 1947? A. 1947.

Q. Thank you very much. Your witness.

### Cross Examination

Q. (By Mr. Parker): You finished?

Mr. Murlless: Yes.

Q. Mrs. Arreola, at the time you bought this property is it not true that all of the cabins there had beds, springs and mattresses? A. No.

Q. With people living in them, that is, tenants, at the time you bought the property? [47]

A. Yes; they were living there rented, but when I received the houses they left and when I got the houses there wasn't anything in them.

Q. Did your tenants take away the beds?

A. I don't know whether they took them with me or not, because, if my husband received the houses I did not know.

Q. You did not receive the houses?

A. My husband received them.

Q. Where were you at the time?

A. In my house; I lived in Jefferson Street. When I went to see the houses that were on the property there wasn't anything in them.

Q. Mrs. Arreola, did you and your husband run a furniture store? A. Yes.

Q. And your husband took out the furniture

(Testimony of Carlotta Arreola.)

that was in there and refurnished all of the houses, did he not, of furniture in the houses?

A. The people who live there own their own furniture.

Q. At least that's what they told you?

A. Yes.

Q. These houses all had hot water heaters did they not?

A. Yes. [48]

Q. And those had just previously a short time previously been installed by Mr. Spriggs before you bought the place?

A. I do not know when he would have installed them. When we got the houses I don't know how the hot water system got there, but it was a very old system.

Q. But the heaters had only recently been installed, had they not?

A. Yes, I don't know. I received the stoves.

Q. Now, there were ice boxes in all of these buildings, were there not?

A. The largest house had an ice box, but it wasn't used; it was outside because they had a refrigerator outside.

Q. Did you get the refrigerator with the place?

A. No; it was theirs.

Q. I see. Well, isn't it true that the little houses all had one ice box?

A. I didn't see anything. It's possible that my husband could answer that question, but I can't.

Q. Now, are you prepared to say that the buildings didn't all have tables and chairs at the time

(Testimony of Carlotta Arreola.)

this sale was made, or do you know about that?

A. I didn't see anything; for this reason I can't say what they had. [49]

Q. Do I understand you correctly, Mrs. Arreola, that it was sometime after your husband had taken charge of this property that you saw the, it for the first time?

A. Yes; that's the truth. It's the first time I had seen them when he received it; before I had not seen them.

Q. Now, Mrs. Arreola, you were making payments in 1948 and up until at least February 26 of 1949 to the Valley National Bank, weren't you? Immediately after you bought the property you started making payments to the Valley Bank?

A. Yes.

Q. And your payments came twice a year?

A. Yes.

Q. And you did not make any payments—you did not make any payments directly to Mr. Spriggs, did you?

A. No. Other than the first \$4,000 we paid. If the other money was paid directly to him I didn't know about it.

Q. The first \$4,000 you say you paid to the real estate company? A. Yes.

Q. Now, do you know that the Valley Bank owned the mortgage and the note on which you were [50] making payments to the bank?

A. Yes, because we made the payments to the bank. We paid the bank.

(Testimony of Carlotta Arreola.)

Q. That's all.

Redirect Examination

Q. (By Mr. Murlless): You don't know who, to whom the money went, except you made the payments to the Valley National Bank?

A. Yes, to the Valley Bank.

Q. But the \$4,000 was a cash down payment?

A. Yes.

Q. Thank you very much, Mam. May this witness be excused, too, if your Honor please?

Mr. R. A. Thompson.

RUSSELL A. THOMPSON

was called as a witness on behalf of the Government, and being first duly sworn testified as follows:

Direct Examination

Q. (By Mr. Murlless): May I ask again, what is your name? A. Russell A. Thompson.

Q. Where do you live? [51]

A. 3513 East Van Buren.

Q. What is your work?

A. Barber, broker and motel operator.

Q. How long have you lived in Phoenix?

A. Between 12 and 13 years.

Q. What was your work in 1945, sir?

A. In 1945 I was a real estate salesman and also a motel operator.

Q. And in connection with your work in 1945 did you know the defendant, Claude E. Spriggs?

(Testimony of Russell A. Thompson.)

A. Yes, sir.

Q. And in what connection if you can recall?

A. I had a listing on a piece of property at 2008 East Henshaw Road and Mr. Spriggs came in to see me at the office of J. O. Snowden in regards to buying some real estate.

Q. During that year you were employed as a salesman by Mr. J. O. Snowden, is that right?

A. Yes.

Q. Where was the office?

A. Second Avenue catercorner from it, the Orpheum Theatre.

Q. How long had you been in the real estate business at that time, sir?

A. Approximately two or three years.

Q. Now, I hand you a piece of paper and ask [52] you generally what it is; just a general description of it, sir?

A. That's a preliminary sales contract.

Q. Is it in connection with the defendant, Claude E. Spriggs?      A. Yes, sir.

Q. I move for its being marked for identification, if your Honor please.

(Whereupon the document was marked as Government's Exhibit 9 for identification.)

Mr. Murlless: I hand you Government's 9 for identification, Mr. Thompson, and ask you if that is in connection with the sale or of the transaction about which you speak with respect to land on 2008 East Henshaw Road?      A. Yes, sir.



(Testimony of Russell A. Thompson.)

Q. And will you state in that general connection what it is.

A. It's the agreement. It's an agreement. It's an agreement that we drew up in regard to the price and the deposit that I received.

Q. From its face Government's 9 purports or appears to be signed by the defendant, Claude E. Spriggs?

A. Yes, sir.

Q. Did you observe his signature there? [53]

A. Yes, sir.

Q. Is that also the agreement that you came to?

A. Yes, sir.

Q. I move its admission, if your Honor please.

(Thereupon the document was handed to counsel for defendant.)

Mr. Parker: No objections other than the general objection.

Mr. Murlless: I move again for admission of Government's 9 in evidence.

The Court: Admitted.

(Whereupon the documents were marked as Government's Exhibit 9 in evidence.)

Mr. Murlless: Rather than read this I'll ask Mr. Thompson to paraphrase the agreement if he may, if your Honor please.

A. Do you want me to read it?

Q. No, if you will paraphrase it, tell the jury what the agreement is as reflected there.

A. It was the sale of two lots and on one lot there was two or three rentals there at the time I

(Testimony of Russell A. Thompson.)

sold this property, and would you like me to tell some of the transactions?

A. Yes, sir; please.

Q. Well, it was owned by a man by the name of [54] Mr. Murphy and he was very badly in need of money and came to me with this listing.

Q. Was it Frank Murphy?

A. Yes, he was a plumber, and he was having considerable domestic trouble with his wife who later passed away and he told me to sell the property. He was asking more money for it.

Q. How much was he asking for it?

A. Well, I'll have to go just from memory. It was up in a \$3,000 figure.

Q. Go right ahead, sir.

A. The question on making this sale, Mr. Murphy wanted to sell one lot and the rentals and keep the other lot, and Mr. Spriggs was interested in getting both lots and the rentals so it was just merely a question of us coming to terms on a price which we had, did, very easily, and then I went into the office and drew up a preliminary agreement, contract.

Q. That was it, that being the preliminary contract there?      A. Yes.

Q. And for how much money did it call for, consideration of that property?      A. \$2,700.

Q. And what was the location of it then? [55]

A. 2008 East Henshaw Road.

Q. Do you know, sir, of your own knowledge what the legal description is?

(Testimony of Russell A. Thompson.)

A. Without looking at this paper—do you want me to look at it?

Q. Yes, it is in evidence.

A. I'll look at it and I'll be sure. 2008 East Henshaw. Two lots. A building and furniture on owner's side. Lots 47 and 48, block two, Eubanks Tract. That's the complete——

Q. Can you tell there how many units, improvements there were upon those lots?

A. Either two or three rentals. I'm not positive which.

Q. Do you recall whether you had an opportunity to look at them on or about the date that contract bears?

A. At the property?

Q. Yes, sir.

A. Mr. Spriggs and myself went out to see Mr. Murphy and we come to an agreement while we made the first trip out there.

Q. I see; and Mr. Murphy at that time did go to the property to show it?

A. Mr. Murphy was at the property when we arrived. [56]

Q. If you can recall to the best of your ability the nature of the improvements that were there.

A. They were one-room rentals.

Q. Constructed wood, or something else?

A. Cement block, if I am not mistaken.

Q. And to the best of your knowledge——

A. They were quite new; just been built.

Q. Two or three of them?

A. Yes, sir.

Q. Big or small?

A. Small.

(Testimony of Russell A. Thompson.)

Q. Relatively small? A. Yes.

Q. Will you state the date when that agreement was consummated? A. May 26, 1945.

Q. And in that connection and in the same connection, that is with that preliminary agreement, did you have further contact with Mr. Murphy or Mr. Spriggs and, if so, will you state to the jury the circumstances?

A. I filed it, followed the standard procedure on this transaction. I had to draw it up and I went to Sprigg's office and he signed it and Spriggs took me out to his home—I forget the [57] exact address—but it was in the Encanto district, and his wife signed and I immediately went out to Mr. Murphy and he signed and I made a trip out on Grand Avenue. Mrs. Murphy was staying in some court, I don't remember, and she signed.

Q. All signed that agreement in your presence?

A. Yes.

Q. Then did you observe or have any part of the handling of the funds name there, \$2700?

A. I received the \$500. I don't remember if I turned it to Snowden or directly to escrow.

Q. By that will you explain what you mean "directly to escrow."

A. In all of our sales we have set up a preliminary escrow instructions up in the Title and Trust Building, and of course the property is checked for anything that might be against it, so that the buyer will receive a good title and at the end of that check and at the end of that escrow generally the

(Testimony of Russell A. Thompson.)

buyer is notified to come in and bring the balance of the money and consummate the sale.

Q. And did you have occasion, or can you recall whether or not you were present at the closing of that escrow? A. No, I wasn't. [58]

Q. You handled about \$500 of that \$2,700?

A. Yes, sir.

Q. And as far as you know that's all?

A. Yes, sir.

Q. Was there any other money other than that which was agreed upon there paid by Mr. Spriggs by Mr. Murphy to your knowledge?

A. Not to my knowledge.

Q. Do you have any reason to believe there was or was not?

A. Any—neither one way or the other—I have no reason to believe one way or the other.

Q. Your witness.

### Cross Examination

Q. (By Mr. Parker): Mr. Thompson.

A. Yes.

Q. Would it refresh your recollection to suggest to you that the building or buildings there might be what would be commonly called a duplex of some sort?

A. Like I say, I don't remember if it was a duplex or a triplex.

Q. Does the expression "furniture in owner's side" suggest a duplex to you?

A. It wouldn't necessarily. [59]



(Testimony of Russell A. Thompson.)

Q. Well, if I suggested to you that it was simply two one-room rentals, would that refresh your recollection any?

A. I'd hate to say, because I really don't remember if it was two or three.

Q. Well, now, Mr. Thompson, you spoke of these small one-room buildings, but you stated that they were new.

A. They were comparatively new.

Q. Did you mean to imply that they were not completed, that the construction had ever been completed on those?

A. Yes; they were completed.

Q. Isn't it a fact that there were no bathroom fixtures in either one of them?

A. That I do not remember.

Q. Is it not a fact that they had never been finished on the interior?

A. I rather imagine there was, probably what was in them what they were building mostly at that time was showers and toilets.

Q. Do you recall that there were no bathroom fixtures at all in these?

A. No; I don't recall that.

Q. Do you recall that they were unceiled—there was no ceiling? [60]

A. There was ceilings.

Q. You do recall that?           A. Yes.

Q. Are you quite positive about that?

A. Yes.

(Testimony of Russell A. Thompson.)

Q. What kind of roofs did they have on them, if any?      A. I believe flat roofs.

Q. Flat roofs?

A. I believe so. Composition, I rather imagine.

Q. Were they plastered on the inside?

A. I rather imagine they weren't. Probably wallboard.

Q. As a matter of fact, there was no wallboard whatsoever, Mr. Thompson.

A. There was wallboard.

Q. You are quite positive?

A. I'm quite positive.

Q. When did you last see the property?

A. In 1945.

Q. That's the last time you have seen it?

A. That's right.

Q. If I remember, suggested, to you that there is no wallboard even to this date and never was, you would still insist there still was? [61]

Mr. Murlless: I object to the form of the question.

The Court: You may answer it.

A. There was wallboard at the time I sold the property.

Q. You are quite sure?      A. Yes, sir.

Q. Was there a bill of sale, Mr. Thompson, made on this furniture that's referred to here in Exhibit 9?      A. I don't remember.

Q. Maybe; do you recollect looking at the Exhibit that there was some furniture?

(Testimony of Russell A. Thompson.)

A. Well, there is no way of telling by this piece of paper whether there was or wasn't.

Q. There is some reference to furniture there?

A. That's right. Many times when there is a small amount of furniture we merely group it as a whole in this way. That depends quite often on the buyer and seller how they agree on it.

Q. By the way; there is one other question. Now, this property is located in the southeastern section of Phoenix, is it not?      A. Yes, sir.

Q. And in what school district?

A. That I couldn't tell you. I believe at [62] that time, let's see, Wilson, I believe at that time, but I couldn't tell you what it is now.

Q. The surrounding neighborhood there was of what character?      A. It is quite vacant.

Q. Who is what?

A. Everything was pretty well vacant at that time I sold the property.

Q. Vacant lots around there?

A. Yes, sir.

Q. Not an improved or built-up neighborhood at all?      A. No, sir.

Q. And how would you class it in real estate or whatever terminology you use as to the type of neighborhood?

A. Well, we considered it a class F neighborhood that was hard to sell real estate in.

Q. Hard to sell?

A. Yes, sir. At that time.

Q. That's all.

(Testimony of Russell A. Thompson.)

Mr. Murlless: Thank you very much, sir. Mr. Harry C. Jones, if your Honor please.

**HARRY C. JONES**

was called as a witness on behalf of the Government, and being first duly [63] sworn testified as follows:

**Direct Examination**

Q. (By Mr. Murlless): Mr. Jones; I believe you stated "Harry C. Jones?"

A. That's right.

Q. What is your work?

A. Escrow Officer of the Arizona Title Guarantee and Trust Company.

Q. How long have you been so employed?

A. Since 1945.

Q. How long have you lived in Phoenix?

A. Since 1941.

Q. And the company for which you work is Arizona Title Guarantee and Trust Company, and is it a business, sir, within your knowledge that is a part of which business is the keeping of records?

A. Yes.

Q. And, generally, will you state to the jury the nature of the records kept there and maintained over a period of years as official records of that company?

A. The original escrow instructions, as signed by the buyer and seller. Any papers or receipts in connection with payments and [64] disbursements. In fact, anything in connection with the

(Testimony of Harry C. Jones.)

entire handling and consummation of the escrow.

Q. Purchase and sale of real property, that is what you mean by an escrow? A. Yes.

Q. And ancillary to a purchase and sale of a property? A. Yes.

Q. And that is the nature of the official records kept by that company? A. Yes.

Q. And in that connection you are an Escrow Officer? A. Yes, sir.

Q. Your company was served with a subpoena duces tecum in a certain case, United States Government versus Claude E. Spriggs, C-10711?

A. Yes.

Q. And in that connection were you designated as the custodian of certain records of that company? A. Yes.

Q. I'll ask you, sir, if you brought those records with you? A. Yes, sir. [65]

Q. And will you state whether or not you have a set of records, escrow records, upon an Eglar-Spriggs transaction? A. Yes.

Q. Will you state to the jury, please, about the date of its consummation?

Mr. Parker: I'd like to make this objection, generally, and let it go to all the questions of the witness hereafter; the objection of former adjudication.

The Court: Continue.

Mr. Murlless: Proceed, please, sir.

A. Will you state that question, please?



(Testimony of Harry C. Jones.)

(Thereupon the last question was read to the witness by the reporter.)

A. March 24, 1945.

Q. And is that the opening or closing date?

A. Closing date.

Q. Closing date of the escrow? And who were the parties to it, sir?

A. Jacob Eglar, seller; Claude E. Spriggs; Evelyn Lee Spriggs, buyer.

Q. And the description of the property involved, if it is there and you can state it.

A. Lot 7 and 8, block 15, Collins Addition.

Q. Is there any way from your records to state the street address? Of that property?

A. No.

Q. Was any personal property sold in the deal by Eglar to Spriggs?

A. According to the records there was nothing handled in the way of personal property.

Q. Part of those records in any event. All right, sir, was it an out and out sale?

A. Cash sale, what we would determine.

Q. And when did title pass to the defendant, Claude E. Spriggs?

A. On March 4, 1945.

Q. And in that connection does the record reflect the receipts for payments by Mr. Spriggs to Mr. Eglar?

A. Yes.

Q. In what sums were they, sir? Those payments?

A. There was \$1,000 that was deposited at the

(Testimony of Harry C. Jones.)

time of escrow was started, January 19, 1945, and \$4,000 was deposited on March 12.

Q. 1945? A. Yes.

Q. Do you have the original of those receipts?

A. I have the photostatic copy and I also have a copy, it's the original of the receipt, I imagine, which—— [67]

Q. The original of the receipt; you have an original duplicate of the receipt?

A. That's right. That's a photostatic copy of the receipt.

Q. And it is your request for the integrity of your records of the Arizona Title and Guarantee Company that the receipts be used only for the purpose of determining that the escrow, the copies are true copies, is that right? A. Right.

Q. May I have them for their marking for identification?

Mr. Parker: Mr. Murlless, you don't need to go to that trouble. If the witness says they are true copies just go ahead and examine the photostats.

Mr. Murlless: And you did examine the marking of this photostat? A. Yes.

Q. They do represent exactly, exact photostatic copies of the receipts which were given for funds paid by Mr. Spriggs to the account of the Eglars?

A. They do.

Q. Is that true? A. Yes, sir.

Q. May this be marked, if your Honor please, [68] for identification?

(Testimony of Harry C. Jones.)

(Whereupon the document was marked as Government's 10 for identification.)

Mr. Murlless: Government 10 comprises those two receipts of which you have just testified, Mr. Jones, is that true?      A. Right.

Q. Move their admission in evidence, if your Honor please.

(Thereupon the document was handed to counsel for defendant.)

Mr. Parker: I object to it on the ground that there is no foundation laid. The defendant doesn't appear to have signed these two receipts. Not chargeable with them.

The Court: They are admitted.

(Whereupon the document was received as Government's Exhibit 10 in evidence.)

Mr. Murlless: In that same connection, sir, particularly with respect to the transaction you have just been testifying, do you have some other of the official records of the Guarantee Trust Company?

A. I have; the photostatic copies of the original escrow instructions signed by both the buyer and seller. [69]

Q. Is it four loose photostatic papers?

A. That's right.

Q. Are those four loose photostatic copies exact copies? Of the escrow instructions? As appear in the records of the Arizona Title and Guarantee and Trust Company?      A. Yes, sir.

Q. May this appear as Government's 11 for identification?

(Testimony of Harry C. Jones.)

(Whereupon the document was received as Government's Exhibit 11 for identification.)

Mr. Murlless: I hand you Government's Exhibit 11 for identification and ask you if that, those are photostatic copies of the original escrow instructions that are part of the official records of the Arizona Guarantee and Title Company?

A. Yes.

Q. I move for their evidence.

Mr. Parker: May I ask a question on voir dire? Mr. Jones, are you acquainted with the defendant?

A. I might possibly have seen him. I'm not acquainted with him.

Q. You don't know him? A. No.

Q. And at the former trial you also stated you weren't acquainted with him and didn't know him? Now, awhile ago when you stated that these escrow instructions which are now the subject of Government's Exhibit 11 for identification were signed by the parties, did you intend to convey the impression that you know Mr. Spriggs' signature, that you so identify it? A. No.

Q. Did you see Mr. Spriggs or Mrs. Spriggs since then? A. No.

Q. Object to it on the grounds there is no proper foundation laid.

The Court: You expect to supplement that?

Mr. Murlless: The answer to your question, if your Honor please, is no. However, there are evidences of the handwriting that are in the Court and

(Testimony of Harry C. Jones.)

in evidence with respect to which there has been a third party evidence, and that's all I think.

The Court: Admitted.

(Whereupon the document was received as Government's Exhibit 11 in evidence.)

Mr. Murlless: Does Government's Exhibit 11 in evidence reflect to your understanding and in your official capacity the date when title passed of the property about which you have been testifying?

A. There would be nothing on here that would show the date that the title passed to Mr. Spriggs. This is the date here that shows when the escrow was started.

Q. And that date is when, sir?

A. January 19, 1945.

Q. Does it also show when it is closed?

A. Not on there; I do have a record on the county recorder's receipt that shows that it was recorded on March 24, 1945.

Q. March 24, 1945, and that is a statement that you make from the official records?

A. Right.

Q. And, generally speaking, what is the source of that, sir?

A. That is the receipt that is stamped by the County Recorder at the time the documents are recorded, at the time the documents are presented to the County Recorder for recording.

Q. And what was the date again, sir?

A. March 24, 1945.

Q. Thank you. From Government's Exhibit 11,



(Testimony of Harry C. Jones.)

sir, can you tell the aggregate of the consideration paid?       A. \$5,500.

Q. Now, will you state whether or not your [72] records also reflect a sheet upon those escrow instructions that are Government's Exhibit 11 in evidence? Settlement sheet?       A. I have it.

Q. You hand me a photostat; does that exactly represent the settlement sheet as it appears in your files?       A. Yes.

(Whereupon the document was received as Government's Exhibit 12 for identification.)

Mr. Murlless: I hand you Government's Exhibit 12, sir, and ask you to tell the jury what it represents in the business with respect to which you are, your experience and your office is held.

A. It covers all of the receipts and disbursements in connection with the escrow.

Q. Is the escrow with respect to which you have just been testifying?       A. Yes.

Q. Will you state the legal description, if it appears.

A. Lots 7 and 8, Block 15, Collins Addition.

Q. And the parties.

A. Jacob Elgar selling to Claude E. Spriggs and Evelyn Lee Spriggs.

Q. And does Government's 12 for identification [73] represent a settlement by your company with the parties to that transaction?

A. That's right.

Q. And it is a copy of the official records?

A. As we made our settlement.

(Testimony of Harry C. Jones.)

Q. We offer it as Government's 12.

(Thereupon the document is handed to counsel for the defendant.)

Mr. Parker: I have no specific objection to this.

(Whereupon the document was received as Government's 12 in evidence.)

Mr. Murlless: And in addition to the sum which you stated, \$5,500, as being the sales price upon the purchase by Mr. Spriggs on this transaction, did he have to pay anything else, any other money?

Mr. Parker: Your Honor, the exhibit speaks for itself. It's been adequately explained. The witness says he doesn't know the defendant and yet the form of counsel's question would imply that he did, and I think the exhibit is perfectly evident, and may be circulated among the jury.

The Court: He may ask. What else did he pay?

A. I didn't.

The Court: What else did he pay besides [74] \$5,500?

A. \$5,500 was the selling price. Mr. Spriggs received a return of \$40.63 due to rent adjustments and a pro-ration of the taxes.

Q. Paid \$5,500, and then was refunded?

A. \$40.33.

Q. As a prorate of the rent on the property?

A. Yes, sir.

Q. Now, in connection with the same property not the same escrow, but the same property, will you state whether or not the official records of the Arizona Guarantee Title and Trust Company re-

(Testimony of Harry C. Jones.)

flected in its official records itself, when, the record of this same property with respect to when Mr. Spriggs sold it?       A. No.

Q. What was the other party to that transaction?

A. Jesus S. Arreola and Carlotta G. Arreola.

Q. And upon what date was the transaction consummated?

A. That was consummated on August 27, 1947.

Q. And in that connection what, generally, do your official records reflect, what are the instruments of which you have been requested to bring to court today? [75]

A. The escrow instructions, the settlement sheet and a photostatic copy of the check in settlement of the sale to Mr. Spriggs.

Q. That's the payment to Mr. Spriggs of a check of the Arizona Guarantee Title and Trust Company?

A. Covering the net proceeds.

Q. Very well, sir; and may I have the copy of the escrow instructions?

The Court: Oh, just give it a figure. You don't need all of that. How much did he get out of it?

A. The net proceeds were \$3,474 and 77 cents and a mortgage for \$4,500.

Mr. Murlless: The figures again?

A. \$3,474 and 77 cents.

Q. Did you hear the testimony of Mrs. Arreola this afternoon?       A. Yes, sir.

(Testimony of Harry C. Jones.)

Q. She stated, do you recall that she stated there was a \$4,000 down payment?

A. Yes, sir.

Q. Did you tell the jury what happened to the other parts of in general what happened to the, it, or is it reflected in one of these instruments?

A. It would be reflected in this closing [76] statement.

Q. May I have it and may it be marked for identification, if your Honor please. That's the last page here, sir.

A. That's the last page.

(Whereupon the document was marked as Government's Exhibit 13 for identification.)

Mr. Murlless: I hand you Government's Exhibit 13 and is that the settlement sheet on the Spriggs-Arreola? A. Yes.

Q. It is the photostat of the official records of the settlement with the two parties of the transaction? A. Yes.

Q. May I move it be admitted in evidence, if your Honor please.

(Thereupon the document was handed to counsel for defendant.)

Mr. Parker: Object to it on the ground of insufficient foundation.

The Court: Admitted.

Q. And without reading all of it, sir, is the difference between \$3,474.77 and \$4,000 reflected in the entries in Government's 13 in evidence?

A. Yes. [77]

(Testimony of Harry C. Jones.)

Q. Just generally speaking, that difference is reflected there by payments that were made before the funds were paid over? A. That's right.

Q. Thank you very much, sir. Now, in this—has your attention been directed, sir, to certain documents with respect to another transaction purportedly, or, I won't mention the name, Spriggs and Van Denburgh? A. Yes, sir.

Q. And in that connection will you state concerning what property your records have a reference to there?

A. Lot 6 and the south 10 feet, Eastwood Place, and east ten feet thereof.

Q. And from those records, sir, could you tell what the street address of that legal description is?

A. No.

Q. Who were the parties again?

A. Claude E. Spriggs and Evelyn Spriggs, Lee Spriggs, sellers, and Howard M. Van Denburgh and Ruth E. Van Denburgh.

Q. And what was the date of the transaction?

A. It started on October 30, 1947, and consummated on November 20, 1947. [78]

Q. And in that connection did you have, generally, the same records that you have stated with respect to the two other transactions?

A. Yes.

Q. And what was the amount of money paid?

A. \$2,700.

Q. And how much of that was paid to Mr. Spriggs? A. \$2,696.59.



(Testimony of Harry C. Jones.)

Q. Do you have a settlement sheet that reflects the difference between those figures?

A. Yes.

Q. Is it the photostatic copy of the official records of the Guarantee Company, reflecting that difference in this transaction? A. Yes.

Q. I move it be marked for identification, if your Honor please.

(Whereupon the document was marked Government's 14 for identification.)

Mr. Murlless: Is Government's Exhibit 14 for identification that settlement sheet with respect to that transaction? A. Yes.

Q. We move for submission into evidence, if your Honor please. [79]

Mr. Parker: I object on the same grounds as before; no proper foundation.

The Court: Admitted.

(Whereupon the document was received as Government's Exhibit 14 in evidence.)

The Court: Cross examination.

### Cross Examination

Q. (By Mr. Parker): Mr. Jones, do you know whether or not the \$4,500 mortgage arising out of the Arreola deal was sold at a discount to the Valley National Bank?

A. No, I would have no way of knowing.

Q. The record doesn't show it any place? Of the transfer of the mortgage to the Valley National Bank at a value lower than its face? A. No.

(Testimony of Harry C. Jones.)

Q. You don't know of your own knowledge that this gentleman sitting to my right is the Claude E. Spriggs that appears on these instruments, do you?

A. No.

The Court: Jurors, come back at one o'clock.

(Thereupon the Court was recessed at 4:10 o'clock p.m. until the following day at 1:00 p.m.) [80]

(All parties having heretofore been noted, the trial resumed as follows on April 1, 1954, at 1:07 o'clock p.m.)

Mr. Murlless: In the best of my recollection Harry C. Jones was on the stand.

The Court: I thought you were through with it.

Mr. Murlless: I was, if your Honor please. May he be excused. Mr. Charles R. Custin. Do I understand I am to proceed?

The Court: Yes.

### CHARLES R. CUSTIN

was called as a witness on behalf of the Government and being first duly sworn testified as follows:

#### Direct Examination

Q. (By Mr. Murlless): What is your name, please? A. Charles R. Custin.

Q. What is your work?

A. I am an Escrow Officer of the Phoenix Title and Trust Company.

Q. For how long? A. Eighteen years.

(Testimony of Charles R. Custin.)

Q. How long have you lived in the State of [81] Arizona? A. Twenty-one years.

Q. And as such officer, that Escrow Officer of that company, have you been delegated for the custody of certain records that were brought to trial in this case today? A. I have.

Q. And in that connection, generally, sir, is the Phoenix Title and Trust Company an organization, a part of the business of which is a keeping of records? A. That is true.

Q. And, generally speaking, will you tell the jury the nature of the record you have brought today?

A. One, an escrow for the sale of property, and the other is the title search for the issuance of the title policy.

Q. These are both parts of the official records of the Phoenix Title and Trust Company of Phoenix? A. That is correct.

Q. With respect to those records, sir, do you have a reference or some of your records with reference to a Murphy-Spriggs transaction sometime in 1945, about May 26, 1945? [82] A. Yes.

Q. In that connection what real property did it involve?

A. Lots 47 and 48, Block 2, Eubanks Tract.

Q. And further—that is an addition to the city of Phoenix, Maricopa County?

A. That is correct.

Q. Will you state the full names? Of the parties involved?

(Testimony of Charles R. Custin.)

A. Frank Murphy and Connie Murphy, his wife, as sellers, and Claude E. and Evelyn Lee Spriggs as buyers.

Q. This is a part of the transaction, or transfer, of title from the Murphys to Mr. Spriggs at about that date in 1945? A. That is correct.

Q. Real property transaction?

A. That is correct.

Q. Does it show the—do you have a paper there in which the money transactions were recorded?

A. The final settlement statement.

Q. That will be fine, sir. May this document—this is what you speak of, a settlement sheet?

A. That's right; that's the final settlement sheet.

Q. May this document be marked for identification, [83] if your Honor please?

(Whereupon the document was marked as Government's Exhibit 15 for identification.)

Mr. Murlless: I hand you Government's 15 for identification and ask you if that's the settlement sheet about which you have been testifying, sir?

A. Yes, sir.

Q. And involving the real property, what is the description?

A. Of lots 47 and 48, Block 2, Eubanks Tract.

Q. And a seller by the name of?

A. Frank Murphy and his wife to Claude E. Spriggs and his wife.

Q. And does it record money transactions in that regard, or connection?

(Testimony of Charles R. Custin.)

A. That's true.

Q. Move for its admission in evidence, if your Honor please.

(Whereupon the document was marked as Government's 15 in evidence.)

Mr. Parker: Objection to it on the ground no proper foundation has been made.

The Court: Admitted.

Mr. Murlless: I hand you Government's 15 in evidence, Mr. Custin, and ask you what was the [84] consideration paid in connection with that real property transaction about which you have just testified? A. \$2,700.

Q. Paid by whom?

A. The agent for the account of Mr. Spriggs.

Q. And in that connection does your records show that there was any more cost to Mr. Spriggs except that \$2,700?

A. There was costs, but there was off-setting credits, so that there was no additional money put up.

Q. Will you state to the jury the circumstances, if they are reflected there?

A. An escrow fee, \$6.25 and recording fee of \$1.95, and a credit of 52 cents for taxes and a credit of the \$17.64 for rent, leaving a net return to the buyer of \$9.96.

Q. Thank you very much, sir. I believe that you stated at first that you also had an official record with respect to another transaction, if I un-



(Testimony of Charles R. Custin.)

derstood, was a Fisher-Spriggs transaction, sometime in September of '47?

A. That was a request for issuance of a title policy on him.

Q. And by whom was it made? [85]

A. Claude E. Spriggs.

Q. And do you have a copy of that request, sir?

A. Yes, I do.

Q. And do you know that pursuant thereto that finally a title policy was issued to Spriggs?

A. Yes; I have a photostatic copy of each. You want one at a time?

Q. The application for title policy is the first document you gave me? A. Yes.

Q. May this be marked for identification, if your Honor please.

(Whereupon the document was marked as Government's Exhibit 16 for identification.)

Mr. Murlless: I hand you Government's 16 for identification and ask you if that is the application appearing there in the name of Claude E. Spriggs for a title policy in regard to a Fisher-Spriggs transaction in September of 1947?

A. That is correct.

Q. Of your official records? A. Yes.

Q. A photostatic copy of records that are kept in the regular course of business of the Phoenix Title and Trust Company?

A. That is right. [86]

Q. Move for its admission in evidence, if your Honor please.

(Testimony of Charles R. Custin.)

(Thereupon the document was handed to counsel for the defendant.)

Mr. Parker: Object on the ground that no proper foundation has been laid.

The Court: Admitted.

(Whereupon the document was received as Government's Exhibit 16 in evidence.)

Mr. Murlless: I hand you Government's Exhibit 16 in evidence, Mr. Custin, and ask you if pursuant thereto a title policy was issued in the name of Claude E. Spriggs and the date it was issued, if you will state?

A. It was issued to Claude E. Spriggs and his wife under date of October 11, 1947.

Q. Thank you very much, sir.

The Court: Is that the item in which you claim depreciation was over-stated?

Mr. Murlless: This is the Spriggs-Fisher, if your Honor please, and it's not an item in which we claim over-statement of depreciation, on the other hand an item we expect to, we ask for a taxable gain in 1947.

The Court: How many?

Mr. Murlless: Two of that type; this is one [87] and the other was the Spriggs-Eglar-Arreola or Collins Addition.

The Court: What was the transaction where the woman——

Mr. Murlless: The Spanish-American?

The Court: No.

Mr. Murlless: Mrs. Fisher?

(Testimony of Charles R. Custin.)

The Court: This is the same?

Mr. Murlless: Yes; this represents what it costs, what the costs were in addition to what she stated.

Q. And you have the title policy?

A. Yes.

Q. You stated it was issued in October of '47 to Claude E. Spriggs? A. That's correct.

Q. Thank you very much, sir; your witness.

### Cross Examination

Q. (By Mr. Parker): Mr. Custin, what is your position with the Phoenix Title and Trust Company? A. Escrow Officer.

Q. Are you the head of the Escrow Department?

A. I'm the second in charge.

Q. Second in charge; and have you been testifying with respect to transactions that you, [88] personally, handled? A. No.

Q. Then I take it that if you did not handle any of these transactions about which you have testified at the time then all of your testimony is based upon your interpretation of what you found in the records of the title company?

A. That's quite true.

Q. You have no personal knowledge of any of the matters about which you testified?

A. That's correct.

Q. Are you acquainted with the defendant, Claude E. Spriggs? A. Yes.

Q. How is that, sir? A. Yes.

Q. How long have you known him?

(Testimony of Charles R. Custin.)

A. About ten or twelve years, I guess.

Q. About ten or twelve years. Do you know who did handle the transactions that you have testified about?

A. Yes.

Q. Who?

A. The escrow with Frank Murphy was handled by a man by the name of Sordeman.

Q. Is he an employee of the Phoenix Title [89] and Trust Company?

A. No, he's not at present.

Q. Was he at the time? A. Yes; he was.

Q. What about the other matter that you have testified to?

A. It was handled in our title department and that order was taken by the title department's order desk.

Q. Do you know who that would be?

A. Let's see whether I—no, it was just put in the regular course of business and I don't, I can't say for sure that I recognize the handwriting.

Q. Mr. Custin, I understand, understood, that, you to testify that in connection with Exhibit 15, which, as I recall it, was described as a settlement sheet, that the sheet disclosed the payment in connection with that transaction of \$2,700 by one J. O. Snowden?

A. That is correct.

Q. And if I heard you correctly, you stated at the time that he paid that as agent for Claude E. Spriggs.

A. No; the agent paid it for the account of Spriggs. The receipt issued that way. [90]

(Testimony of Charles R. Custin.)

Q. For the account of Claude E. Spriggs?

A. Yes.

Q. You, of course, have no personal information about that transaction other than as you have testified just what you saw on the basis of the title company?

A. That is correct.

Q. Do you know Mr. Snowden? J. O.?

A. Yes, sir.

Q. There is no showing there in your records that Claude E. Spriggs paid anything there into that escrow?

A. Directly, no.

Q. That's all.

#### Redirect Examination

Q. (By Mr. Murlless): Do you have a copy of that receipt?

A. I have a photostatic copy of it.

Q. That you just testified to?

A. It's attached to the escrow instructions, too.

Q. And this copy or receipt is a true photostatic copy of a record that is of the official records of the Phoenix Title and Trust Company?

A. That was received, yes.

Q. I move for it being identified, if your [91] Honor please.

(Whereupon the document was marked as Government's Exhibit 17 for identification.)

Q. And you are custodian of this record in the same way that the others you have testified to?

A. That is correct.



(Testimony of Charles R. Custin.)

Q. Move its admission in evidence, if your Honor please.

(Thereupon the document was handed to counsel for the defendant.)

Mr. Parker: If it please the Court, I object to it upon the grounds that there is no proper foundation, has been established in any, my judgment, and further, that I find the Exhibit unreadable. I'm unable to decipher the contents. There seems to be some form of characteristics on that; I can't, and I think my eyes are about average. I can't make out the contents of the exhibit, therefore don't know what it's being offered as to content.

The Court: Can you read it?

Mr. Murlless: Yes, sir; it's not easy.

The Court: Go back and read it to Mr. Parker in an undertone.

Mr. Parker: Go ahead and put it in; I have made my objections. [92]

The Court: Admitted.

Mr. Murlless: Now, sir, I can't say whether I asked you this question or not, but how much, if anything, does your record was paid by Mr. Spriggs for the title policy application for which was made as he stated under Government's Exhibit 6, which was issued as you stated sometime in October of 1940?

A. I can't say who paid it, but I know how much was paid.

Q. How much?           A. \$22.

Q. Very well; about 9-15-47?

(Testimony of Charles R. Custin.)

A. That was paid; usually at the time the order is put in it is marked it was paid at that time.

Q. And Government's 16 in evidence indicates also by notation that it was paid at that time?

A. 9-15-47.

Q. Received \$22; is there a notation to that effect? A. \$22 paid at the bottom.

Q. And may this witness, too, be excused, if your Honor please?

The Court: No cross?

Mr. Murless: Mr. C. L. Howard. And may I ask your Honor again, please? [93]

### C. L. HOWARD

was called as a witness on behalf of the Government, and being first duly sworn, testified as follows:

#### Direct Examination

Q. (By Mr. Murless): And may I ask your name again, please? A. C. L. Howard.

Q. And where do you live?

A. 2530 East Roma.

Q. Phoenix? A. Yes.

Q. How long have you lived in Phoenix?

A. Twelve years.

Q. You lived here, I take it, in 1945?

A. Yes.

Q. Know the defendant, Claude E. Spriggs, who sits to the right behind me? A. Yes.

Q. And in what connection do you know him?

A. I sold him a piece of property.

(Testimony of C. L. Howard.)

Q. And where was it located?

A. 515, 517 East Pierce.

Q. Do you know in general its legal description?

A. No, I don't.

Q. Will you describe the property for the jury in general terms to the best of your ability? [94]

A. It was a two-story, four-unit apartment house.

Q. Two-story, four-unit apartment house?

A. Yes.

Q. What nature, kind of construction?

A. Cement block.

Q. And that 515 East Pierce?

A. That's right.

Q. In the city of Phoenix?

A. That's right.

Q. And what was the consideration, if you will recall?

A. \$10,500.

Q. First, do you have a record or independent records of that transaction?

A. I do.

Q. I'm sorry not to have had an opportunity to see your records before, but may I see them for a moment now?

A. Yes.

Q. May I have the agreement that you have there for the records of this court? Would you take it apart for me, sir?

A. I think it all goes together, doesn't it?

Q. Very well; that will be fine. And you don't mind me taking it? May this be marked for [95] identification?

(Testimony of C. L. Howard.)

(Whereupon the document was marked as Government's 18 for identification.)

Mr. Murlless: I hand you Government's Exhibit 18 for identification and will you characterize the documents as they appear in their order, sir?

A. Well, this is an escrow instruction and this is the original agreement, and this is a memo of the payments to be made on that.

Q. And are there, those three, is the first of those documents which you have stated makes up Government's 18 for identification, does it purport to bear the signature of Claude E. Spriggs?

A. Yes.

Q. And of any other person?

A. Of Evelyn Lee Spriggs, Howard and Howard.

Q. And you say it encompasses an escrow transaction, and, a transfer of real property to Mr. Spriggs to you and your wife?

A. That is correct.

Q. And do you, did you observe the signatures placed there?

A. I don't remember. I'm not positive that I did. That might have been my wife and I went to the title company one time and another at another time. [96]

Q. You did put yours there? A. Yes.

Q. That was the agreement under which it was transferred? A. Yes.

Q. The second was an agreement to convey?

A. That's correct.

(Testimony of C. L. Howard.)

Q. Will you state to the jury the legal description of the property if it appears in the second page, please?

A. Block 39, Churchhill Addition, city of Phoenix.

Q. May I move for the admission of this group of three documents as Government's 18 for identification?

Mr. Parker: If your Honor please, I should like to register an objection upon the ground that it is, the relevancy of this exhibit is not apparent, that on the further ground that no proper foundation has been established.

The Court: What piece of property is this?

Mr. Murlless: This is another of the pieces of property upon which depreciation was claimed, if your Honor please.

Mr. Parker: If your Honor please, do you mean '47? [97] A. Yes.

Mr. Parker: You mean this is a part of the Henshaw Road property?

Mr. Murlless: No, sir; one of the pieces of property upon which depreciation was claimed for 1947. It's a matter of identification, if your Honor please. Our problem has been identification of each of the items.

The Court: How many pieces do you claim were over-depreciated? Is this it?

Mr. Murlless: No, sir; it's another of the items.

The Court: I don't follow you. I have a form in the bill of particulars in the old case. It refers



(Testimony of C. L. Howard.)

to over-depreciation only on the Henshaw Road property.

Mr. Murlless: I think we ought to be able to identify each of the items, because the depreciation appears with respect to the single item on the Henshaw Road property in two entries, if I make myself clear; now, with respect to Government's 2 in evidence. I felt the necessity of identifying each of the pieces of the property that are shown depreciated there.

The Court: All right; admitted.

Mr. Murlless: What was the consideration shown? [98]

Mr. Parker: The exhibit speaks for itself in that connection.

The Court: He's already said \$10,000.

(Whereupon the documents were received as Government's 18 in evidence.)

Mr. Murlless: I don't like to differ, if your Honor please, but was it \$10,000 or \$10,500?

A. \$10,500.

Q. Thank you very much. Your witness.

Mr. Parker: No questions.

Mr. Murlless: May this witness, too, be excused, if your Honor please?

The Court: Yes.

Mr. Murlless: Mr. C. L. Sparks.

C. L. SPARKS

was called as a witness on behalf of the Government, and being first duly sworn testified as follows:

Direct Examination

Q. (By Mr. Murlless): Would you state your name?      A. C. L. Sparks.

Q. And what is your work, sir?

A. I'm the County Assessor of Maricopa County.

Q. And for how long have you been in that office? [99]      A. Since January 1, 1951.

Q. And as such a custodian of certain records of the County of Maricopa, the State of Arizona?

A. That is correct.

Q. Required to be kept in your office as a matter of statute of the State of Arizona?      A. Yes.

Q. You are the custodian in your office?

A. Yes.

Q. How long have you lived in the State of Arizona?

A. Lacking 18 days of being 37 years.

Q. And, sir, would you state if you have been requested to make a search of the official records in your office with respect to one Claude E. Spriggs?      A. That is correct.

Q. And did you make such a search?

A. I did.

Q. And will you state to the jury the general, the period over which it extended and what was the nature of the search?

A. The, it extended from '45 up to '48 on all property assessed in his name and property sold

(Testimony of C. L. Sparks.)

during that period where the title had changed [100] from him to a purchaser.

Q. Each one of those items of information concerning the transfer or the assessment of property for a, tax purposes, are information that is maintained in your office as a matter of the usual course of the business of your office, is that correct?

A. That is correct; it reveals positively the assessed valuation and the transfers.

Q. And the identification of the property?

A. And the legal description, location and so forth.

Q. The location, too; it's an address?

A. Yes, sir.

Q. And in that connection with respect specifically to the year 1947, did you make a summary of your findings? A. I did.

Q. That came from your search?

A. I did.

Q. And did you bring the records from which that summary was made to Court today?

A. Yes.

Q. And are they these over here?

A. They are the same as those copied from those books which you have here. [101]

Q. And sir, and you stated that from your search you did make up a summary for the United States of the U. S. attorney and this Court.

A. That is correct.

Q. May I have that, please?

A. Do you want this, too?

(Testimony of C. L. Sparks.)

Q. Not at the moment. May this document be marked for identification, if your Honor please?

(Whereupon the document was marked as Government's 19 for identification.)

Q. I hand you Government's 19 for identification, Mr. Sparks, and ask you if that is the summary of your search which you have prepared for it?

A. That's right.

Q. And will you state for the jury again what it reflects?

A. It reflects the property owned by one Claude E. and Evelyn Lee Spriggs and the property sold during this period.

Q. And does it reflect the taxable value of the property? The tax value?

A. Taxes and assessed valuation.

Q. And it is a summary from the original records kept in the regular course of the business of your office and in your custody as their official custodian? [102]

A. This is a duplicate copy of the records revealed in the tax rolls certified by the Supervisors, computed IBM, certified back to the Treasurer's Office for collection.

Q. And you have brought the books where that summary came from and it is in Court?

A. That is correct.

Q. I move for admission into evidence, if your Honor please. That's 19, Government's 19 for identification.

(Testimony of C. L. Sparks.)

(Thereupon the document was handed to counsel for Defendant.)

Mr. Parker: If your Honor please, I must object to this exhibit upon the ground, first, that it contains a great many matters obviously not relevant to any issue properly before the Court here, and upon the second ground that apparently he is offering this record with respect to valuation of whatever property in there mentioned may be at all relevant and it is not, it is obviously incompetent evidence as to valuation, actual valuation; for the further reason that there are some typewritten documents containing some pencil additions thereto which have not been explained in any manner. It just simply is a shotgun proposition, relevant as a whole neither [103] in time nor subject matter to the issue.

The Court: What are you offering it for?

Mr. Murlless: To show what the group of pieces of property owned by this taxpayer were during 1947 to the end that allocations can be made amongst them in reference to Exhibit 2 of Government's in evidence.

The Court: What's that?

A. That's the income tax return, if your Honor is not complete in its reference to the individual pieces of property. They are not described except by such words as cement, cement, cement; one word.

The Court: I reserve ruling on the exhibit.

Mr. Murlless: Now, in this same connection,



(Testimony of C. L. Sparks.)

were you—will you state whether or not you did make up a property tax assessment only which is, reflects only those items of property on which there are improvements?      A. I do have.

Q. And that is with reference to Government's 19 for identification; it's the property now only that upon which there were improvements that were taxable for that year, is that true?

A. Yes; identified under owner's name and assessments, numbers to be checked through the [104] tax rolls.

Q. And it doesn't have any reference in that next exhibit to the location or the street address?

A. No; it doesn't have any location, only the legal description according to lots and blocks, but no street address.

Q. And may this be marked for identification, if your Honor please?

(Whereupon the document was marked as Government's 20 for identification.)

Mr. Murlless: And I give you Government's 20 for identification, Mr. Sparks, and is that the statement of the improved real property?

A. That's put on one tax bill, the property owned, and assessed under the name of Claude E. Spriggs and Evelyn Lee Spriggs for 1947 showing the assessed valuation of the real estate and the improvements and personal property as the tax bills were billed to him from the Treasurer's Office.

Q. And it is only that upon which taxes are paid?

(Testimony of C. L. Sparks.)

A. Exempt pieces are left off because it is a summary of tax bill for '47.

Q. Any exemptions?

A. Well, according to this there is no [105] exemptions shown here.

Q. That's for pieces of property where there was a valuation requiring a tax?

A. I can't testify that they were paid by him. I don't know who paid it.

Q. Yes, sir; and it is the part of the official records or a summation of the official records which you have brought to cover it?

A. Can be identified as the same assessment. Numbers.

The Court: I suppose you have the same objection?

Mr. Parker: Yes.

The Court: You can cross examine later. We can call him at his office anytime.

A. Yes, sir; that's true.

Q. That's all.

The Court: Thank you, Mr. Sparks.

#### WILLIAM McRAE

was recalled as a witness on behalf of the Government and testified as follows:

#### Direct Examination

Q. (By Mr. Murless): Your name is William McRae? A. Yes. [106]

Q. You testified here yesterday? A. Yes, sir.

Q. You are the Assistant Director of Internal

(Testimony of William McRae.)

Revenue in the District and State of Arizona?

A. That is correct.

Q. You brought some returns with you, didn't you, sir?      A. Yes.

Q. You testified at some length with Governments Exhibit 2 in evidence?      A. That's right.

Q. And in that connection, sir, did you state what the—I wondered if you stated whether or not that return reflects of the taxpayer rendering it that he had, he received income from taxable gains on the sale of capital assets; does it reflect any income from taxable gains on the sale of capital assets?      A. No; it does not.

Q. And it is the return of Claude E. Spriggs and re the State of Arizona?      A. Yes.

Q. That's the return about which you testified yesterday?      A. That's right. [107]

Q. Now, does it have an entry there with respect to depreciation claimed on assets held for rents, that is, real property rentals?

A. Yes, it has a schedule of depreciation claimed.

Q. And does it allocate that to different items in a lump?

A. Yes, there is four items named on which depreciation was claimed.

Q. And are they described, sir?

A. The first item is referred to as frame and date acquired 1945, cost, \$5,500, depreciation claimed \$412.50.

Q. The second.

(Testimony of William McRae.)

A. Marked "cement, cost \$20,000, depreciation claimed, \$2,000."

Q. And the third?

A. Also marked "cement—cost of \$10,500, depreciation claimed \$1,050."

Q. And the fourth?

A. Also marked "cement, cost \$20,000, depreciation claimed \$2,000."

Q. Is the fourth item exactly the same in type, or is the second item?           A. Yes.

Q. For how long does it state that those assets, [108] if they appear on two different lines, how does it state it got in the hands of the taxpayer, Claude E. Spriggs?

A. The date acquired is not shown under either item, but in item two the schedule indicates that it had a remaining life of eight and a half years, whereas in item four the remaining life was nine years.

Q. Different. It indicates that there are different parcels there?           A. Yes.

Q. In that same connection you brought with you to Court and this identified here the documents that you brought as official documents of your office, Government's Exhibit 1 for identification. Does that also reflect a list of depreciable or depreciation items?

Mr. Parker: Object to asking on a document not in evidence.

Mr. Murlless: Does it?

The Court: Wait a minute.

(Testimony of William McRae.)

The Court: Why don't you want to put it in evidence?

Mr. Murlless: I will, sir; I wanted to wait to see if it was really relevant. I'll offer it in evidence, if your Honor please. [109]

(Thereupon the document was handed to counsel for defendant.)

Mr. Parker: Object to it on the ground that it appears to be a return for 1946, a year not in issue in this case.

The Court: What is your point?

Mr. Murlless: If your Honor please, it reflects a different type of, a different set of items of depreciation. I would like to make that point; I'll make another one if that's not adequate.

The Court: You mean inconsistent statement about the same real estate?

Mr. Murlless: Yes, sir.

Mr. Parker: I think he means what some additional real estate not on it later. It's not the same list. It has no probative force, not only not in force and not relevant.

Mr. Murlless: It makes an inconsistent statement, but second, that he's to identify the items that are related in Government's 2 again. And thirdly, that it shows the situation of a man who was in the business of making money in rental houses and in the transaction in the real property.

The Court: Admitted.

Mr. Parker: I neglected another ground, and



(Testimony of William McRae.)

[110] that it relates to a charge of which the defendant has heretofore been exonerated.

The Court: Admitted.

(Whereupon the document was received as Government's 1 in evidence.)

Mr. Murlless: I hand you Government's Exhibit 1, Mr. McRae. Do you recognize it in testimony yesterday? A. Yes.

Q. You stated that it does contain representations with respect to items of capital assets upon which depreciation should be and was in that return claimed? A. Yes.

Q. And will you read those to the jury item by item, sir?

A. First, item of depreciation marked "adobe." "Dated acquired, 1945; cost, \$7,500. Depreciation claimed, \$375.00." Second item marked "frame." "Acquired 1945; cost \$5,500; amount of depreciation claimed, \$550." Third item marked "cement." "Date acquired, 1945; cost, \$20,000; amount of depreciation claimed, \$1,750."

Q. The fourth item is marked "Cement"?

A. "Acquired 1939; cost \$2,500; amount of depreciation claimed, \$1,250." Fourth item also [111] marked "cement—date acquired, 1944; cost, \$10,500. Amount of depreciation claimed, \$1,050."

Q. Now, in that same connection you brought another instrument with you, sir? You brought another instrument with you, that—it's number 8—I hand you Government's 3 for identification and

(Testimony of William McRae.)

ask you if that, too, is an official document of the Internal Revenue service.           A. It is.

Q. And did you testify in its connection to some degree yesterday?           A. Yes.

Q. And the purchase—it purports to be the income tax return for one Claude E. Spriggs?

A. Yes.

Q. We move for its admission in evidence.

The Court: What year?

Mr. Murlless: 1948. But if you'll recall yesterday we clipped two together and there is another item there. Would you mention it?

A. There is an amended return for 1948 attached to the original return.

Q. Thank you, sir.

Mr. Parker: If your Honor please, objection was made to it on the ground that there is no proper foundation laid and it is not relevant to [112] any issue in this case; that it has no relevancy whatsoever to the matter. It's a return and amended thereto, apparently made the year after, and no probative force. Wholly incompetent.

The Court: What did you claim for it?

Mr. Murlless: It is in the same manner, if your Honor please, to the other item that is Government's Exhibit 1 that was just admitted. It is at this point less appropriate, perhaps, because we had Government's 1, and we have had that aid in identifying the individual pieces.

The Court: Cumulative?

(Testimony of William McRae.)

Mr. Murlless: Yes, sir. It is at this time rather cumulative.

Mr. Parker: I object.

Mr. Murlless: May I ask another opportunity to examine this witness, if your Honor please? That's all at this time.

Mr. Parker: May I ask a question at this point? How long have you known Claude Spriggs?

A. Well, at least 30 years.

Q. At least 30 years? Did you know him as a boy in Safford? A. Yes.

Q. And you have known him since he was just a small chap? [113] A. That's right.

Q. Have you been friends during all of those years?

A. Yes; there's never been anything that would have been anything of an unfavorable nature. I have never had dealings with him except in the office.

Q. That's all.

Mr. Murlless: Thank you, sir. We may call this witness again. Mr. Frisinger.

### LOWELL FRISINGER

was called as a witness on behalf of the Government, and being first duly sworn, testified as follows:

#### Direct Examination

Q. (By Mr. Murlless): What is your name, please, sir? A. Lowell Frisinger.

Mr. Parker: Pardon me; I didn't get the name.

(Testimony of Lowell Frisinger.)

Mr. Murlless: Would you spell it?

A. F r i s i n g e r.

Q. What is your work?

A. I am attached with the Engineering and Valuation Section of the Internal Revenue Service, in Los Angeles.

Q. And for how long has that been your work?

A. For five years. [114]

Q. Do you have an educational background preliminary and prerequisite to obtaining this type of work?

A. Yes; for approximately one year with the University of California.

Q. And is a part of the work, do you often make maps or drawings of lots, pieces of ground, or buildings?

A. We do on every valuation that we make.

Q. Did you have any reason to be requested—you have done that for five years? A. Yes.

Q. Did you have occasion to be requested to make a schematic drawing as opposed to a finely scaled drawing on a piece of ground located at 2008 East Henshaw Road? A. Yes. [115]

Q. And when did you do that, sir?

A. I did that Tuesday.

Q. Did you make a drawing of it?

A. Yes, sir.

Q. That is, this Tuesday of this last week?

A. Yes, sir.

Q. And you did not have an opportunity, as I understand it, to measure and scale it off, and

(Testimony of Lowell Frisinger.)

this is not that type of drawing, a schematic for the location of certain improvements on the ground?

A. Yes.

Q. May I see it, please, sir. Now, it is to be marked for identification, if your Honor please.

(Thereupon the document was marked as Government's 21 for identification.)

Q. You have also, sir, sat in the Court for yesterday and today and heard the testimony that have been from the witnesses chair there in this case?

A. I have.

Q. Now, in this connection, will you state to the Court, generally, and to the jury, generally, not what it says on there, but what you have endeavored to reflect. Just the general, [116] not what it says, but what that thing is?

A. The outside rectangular is the two lots, the Lots 47 and 48 of the tract. This is a store. This is a small shop, and this is, that is marked "restaurant".

Q. If I remember, sir, if I may, it is a schematic drawing of what is on that premises up there right now, or was Tuesday when you went out there to look at it?

A. With the exception of a building here, that looks as if it was being constructed at the present time.

Q. The building is not completed out there, that is not on this schematic drawing?

A. No, it isn't.

Q. This intends to be at, to scale?



(Testimony of Lowell Frisinger.)

A. Roughly, no, it isn't.

Q. It is to a rough scale?

A. Yes, to a rough scale.

Q. I move for a submission in evidence, if your Honor please.

(Thereupon the document was handed to counsel for defendant.)

Mr. Parker: May I ask the witness a question or two on voir dire? Mr. Frisinger, I'd like to ask you if it is not a fact that just north of [117] this unit which you have labeled number 7, there is a storeroom here?

A. Yes, sir.

Q. That is not shown? A. Yes, sir.

Q. And north of the storeroom there is a wash-room, that is not shown on your schematic map?

A. I can't answer that.

Q. You can't answer that? A. No, sir.

Q. You mean, you didn't pay that much attention?

A. In '47 there was only the thirteen units, the store, the restaurant and the shop and the others was immaterial.

Q. Were you producing or attempting to reproduce 1947 conditions there? A. Yes, sir.

Q. Although you never saw it until last Tuesday? A. Yes.

Q. Tuesday of this week? A. Yes.

Q. Let me ask you one further question. In the lower left-hand corner, you have designated [118] a rather narrow rectangle called "shop"?

A. Yes, sir.

(Testimony of Lowell Frisinger.)

Q. Now, isn't it a fact that that shop extends a considerable distance over the next lot, presumably it would be Lot 49, if these are numbered consecutively, in that direction?

A. It probably does two feet, more or less.

Q. You think only two feet?

A. I think so.

Q. You didn't draw that part in?

A. No, sir, I did not.

Q. You just cut off at the boundary line of Lot 48; you just cut off that at that point?

A. Yes, sir.

Mr. Murlless: Will you take your pencil, sir, and generally put on to this the two structures about which you have been examined by Mr., by counsel, and with respect to which you stated are not there, in a general way, with your pencil?

A. These are to the north of Lot 7, and—I can't draw here.

Q. Use the blackboard.

A. As to the second building that he spoke about, I am not so sure about that. I don't know.

Q. You don't know whether you could put that [119] in there schematically and to any scale?

A. Would you put one in there, no.

Q. Does it now represent a schematic drawing of what is there, generally, within your observation of the last week?

A. I believe so.

Q. Move for admission in evidence, if your Honor please.

Mr. Parker: Your Honor please, I object to it

(Testimony of Lowell Frisinger.)

as not relevant to any issue in the case. The witness states he did not see the place the first time until Tuesday of this week, which would have been the 27th day, or, but at any rate, Tuesday of this week. The issue here is what the condition was in 1947, your Honor.

The Court: I don't understand that it is the issue. The bill of particulars said, "Depreciation, overstatement, consisted and overstatement of the costs, and false representations of the cost of this property".

Mr. Parker: It certainly has no bearing on that issue. For that reason, I respectfully——

The Court: It is like taking a picture. It is admitted provisionally.

Mr. Murlless: Would you put that away. It needs to be marked here first, and will you [120] prepare to put it up there on the blackboard, sir.

The Court: What does that have to do with the overstatement of costs?

Mr. Murlless: I need some place to identify each one of these items by the workmen that worked on them.

The Court: What does that have to do with the costs?

Q. Because they are going to testify as to the construction costs.

The Court: He didn't purchase them.

Mr. Murlless: No, most constructed between '45 and '47, I think all, but the ones this gentleman left off—now, it has been placed on the blackboard.

(Testimony of Lowell Frisinger.)

That I presume to the north, which is in a northerly direction?      A. Yes, sir.

Q. And that to the south, a southerly, and will you show to the jury what generally is there representing Henshaw Road?

A. This is Henshaw Road back here.

Q. This is, I understand it, just a lay-out of Lots 47 and 48, of what addition?

A. It is Eubank Addition, Block 2.

Q. An addition to the City of Phoenix? [121]

A. Yes, sir.

Q. May this witness be excused—may we recall this witness?

The Court: Mr. Parker is entitled to cross examine.

Mr. Parker: None.

### CHARLES E. DYER

having been first duly sworn, took the stand and testified on behalf of the Government, as follows:

#### Direct Examination

Q. (By Mr. Murlless): And will you spell your name, please?      A. D y e r.

Q. And your first name?      A. Charles.

Q. And what is your work, sir?

A. At the time, a contractor.

Q. All right, sir, you are speaking of what time, 1947?      A. 1947.

Q. And what kind of contracting did you do?

A. General building.

(Testimony of Charles E. Dyer.)

Q. Do you know the defendant, Claude S. Spriggs? [122]

A. Yes, sir.

Q. And in what connection, if you will tell the jury?

A. Well, I did a little work for him.

Q. And you have observed there to your right up against the blackboard a schematic picture of Lots 47 and 48? First, may that be stricken, and where did you do that work for him, sir?

A. On the store building for, and worked on some apartments on Henshaw.

Q. Henshaw Road?

A. Yes, sir.

Q. About what address on Henshaw, if you can recall?

A. About 20th Street and Henshaw.

Q. Near 20th Street and Henshaw?

A. Yes.

Q. To your right there you will see a piece of paper which may or may not reflect to you a schematic drawing of some property on Henshaw Road; do you recognize it?

A. Yes, it is a pretty good rough sketch of it.

Q. And in that connection, can you point out to the jury the parts of any buildings that [123] are on Lots 47 and 48 of Eubank Addition on Henshaw Road that you helped to put up, if any?

A. I helped build a store building there and I worked on three of those apartments. I think the back three.

Q. I believe it was.

A. North.

Q. On the north end of the west side. What are they numbered?

A. 11, 12, 13.



(Testimony of Charles E. Dyer.)

Q. Will you step back and point more particularly so that the jury can see—those back three on the west side and the store building.

A. That is correct.

Q. Can you recall of what part of that building did you take apart? What particular part was yours?

A. Well, I built the store building complete.

Q. What was it built of?

A. Cement block.

Q. Any connection with the three buildings back beyond or in the back there, what part did you take in the building of it?

A. Well, sir, I'll tell you. That's kind of dull in my memory. I don't remember what I did, but they are block construction, too. [124]

Q. Did you build them or have a part in it?

A. I worked on them, yes, but I don't remember what part of it I did do.

Q. Did you have occasion about the time you had finished the store building—do you remember when you did work on the store building?

A. About the third month of 1947.

Q. It was after that work on the three back buildings?      A. Yes, sir.

Q. When would it have been when you worked on the apartment buildings?

A. It was just after the store was built.

Q. Late in '47?      A. Yes.

Q. In that connection, had you ever had nego-

(Testimony of Charles E. Dyer.)

tiation with Mr. Spriggs over the building of those back three apartment buildings?

A. Yes, we, I tried to contact them.

Q. Will you state to the jury what your offer in that regard was?

A. It seems to me like the best I can recollect, I offered to build them for \$1500.00 a unit.

Q. Was that to provide both the labor and materials? [125] A. Yes, sir.

Q. In that connection, were you given the contract? A. No.

Q. Do you know how much they, the plans were that they should cost after you had been refused the contract for \$1500.00 for their construction?

A. No, I don't know what the actual cost was on them.

Q. But you did observe the construction of them? A. Yes.

Q. The commencement of it? A. Yes.

Q. And in that connection, why didn't you observe the completion of them, if you will tell the jury, to the best of your recollection?

A. Claude and I had a little difficulty there and I quit.

Q. You stated that you made a proposition that you would build them for \$1500.00, over that, how much did you conceive would be your profit in that matter?

Mr. Parker: Objection.

The Court: Objection sustained.

(Testimony of Charles E. Dyer.)

Mr. Murlless: A proposition was refused, [126] though, at \$1500.00?

Mr. Parker: Object; it has been answered and asked, and answered before.

Q. Did you observe the completion or see what they looked like after they were completed in general? A. Yes.

Q. What did they look like, if you will describe them for the jury?

Mr. Parker: If your Honor please, may this be a little more specific. I don't know which buildings he is talking about or when. His condition doesn't indicate, and I object to it on the grounds no foundation has been laid.

A. The west inside piece; I have papers——

Mr. Murlless: Will you describe the general construction, the method you went to construction, and what they looked like when they were completed?

A. Block construction, and they have a flat roof, fire wall.

Q. A flat roof?

A. And they are what I call a kitchenette apartment. They have a shower, toilet, and a kitchenette, and one room, bedroom.

Q. And one room, what was it, a combination [127] living room—sleeping room, or bedroom?

A. Yes, a combination living room and bedroom.

Q. And that is with respect to each one of the back apartments? A. That is right.

Q. Could you—could that be stricken in connec-

(Testimony of Charles E. Dyer.)

tion with the building of the store building. Do you know how much it cost Mr. Spriggs to build?

A. I don't say exactly, no.

Q. How much did you receive for your part of the construction of it?

A. I think I drew around \$2200.00.

Q. In that connection, was that payment for services and for materials, too?

A. That was labor and material.

Q. Material and services in that regard?

A. Yes, sir.

Q. You received \$2200.00 for payment—store building?

A. That's the best I can recollect, and I have no record.

Q. Did he provide any part of the materials?

A. No.

Q. And that was at the completion of the [128] store?

A. That is right.

Q. And is that the front building?

A. It is the store building.

Q. Left or west? A. Yes.

Q. Will you tell the jury the dimensions of that, to the best of your knowledge?

A. It is 22 by 35, was my recollection.

Q. Will you step up to that schematic drawing, sir, and if you have no pencil, put the dimensions on that store building.

A. 35 is the long axis, and the 22, the east-west axis.

Q. And within your aid of the construction of

(Testimony of Charles E. Dyer.)

the units 11, 12 and 13 in the back, were they also the same depth as the store?      A. 22 feet.

Q. All of those about 22 feet deep?

A. Yes.

Q. And were the, after you observed those apartments after they had been built, were they plastered inside?      A. I don't think so.

Q. Have a ceiling in them?

A. Not at that time. [129]

Q. Will you show generally what the shape and the form of the roof was that was put on those. Will you step down there and make a drawing of it. I think the chalk is——

A. I have got the chalk. Well, let's see. Come down here. (Drawing.) A fire wall up here (indicating).

Q. And that is what you mean by a slant roof, sir?      A. That's it.

Q. Do you have any other name for that type of roof?

A. Well, some of them call it flat, some shed, and some of them call it——

Q. Thank you very much. Your witness.

#### Cross Examination

Q. (By Mr. Parker): Mr. Dyer, where do you live at the present time?

A. Palmdale, California.

Q. And how long have you been living in California?      A. Oh, approximately three years.

Q. Approximately three years?



(Testimony of Charles E. Dyer.)

A. Yes, sir. [130]

Q. And this construction work that you did was approximately seven years ago?

A. That is right.

Q. Now, Mr. Dyer, did you at that time, did you say you were in the contracting business?

A. That is right.

Q. Were you at that time a contractor, licensed by the State of Arizona? A. Yes, sir.

Q. And I believe you stated that this store room was 22 by 35 feet in dimensions?

A. To the best I can remember.

Q. It had an 11 foot ceiling, did it not?

A. It either had a 10 or 11 foot ceiling.

Q. When finished, plastered?

A. The ceiling was plastered, yes.

Q. It was? A. I don't think so.

Q. You are not sure?

A. I am pretty sure, we didn't plaster them, he did the ceilings.

Q. It was somebody else plastered them after you left the job, that this was done? A. Yes.

Q. Cement floor?

A. That is right, red. [131]

Q. What was that?

A. Red colored floor.

Q. Now, Mr. Dyer, did you do any painting on that building, on that store building?

A. Yes, sir.

Q. You did? Did you furnish the light fixtures?

A. No, I think there was a stipulation in there

(Testimony of Charles E. Dyer.)

that the owner furnishes his own fixtures. We rough wired them.

Q. Did you have a written contract for the construction of that store building?

A. If I had, I can't find it.

Q. Did you look for it? A. I sure did.

Q. What was your recollection, was it in writing or not?

A. I don't know whether it was or not.

Q. Did Mr. Spriggs furnish any of the plumbing? A. I don't think so.

Q. You don't remember for sure about that, do you? A. No.

Q. Did you put in sewer connections?

A. Not me personally, no. [132]

Q. Did Mr. Spriggs do that?

A. No, Mr. Whitaker did that.

Q. Did you pay for it?

A. The two of us paid for it.

Q. You mean hooking it up to the sewer line?

A. Now, no, we stubbed it out of the building.

Q. Mr. Spriggs did that as far as you know?

A. Somebody did.

Q. Isn't it a fact that if the walls were plastered on the inside, somebody else besides yourself did it, you wouldn't know who?

A. No, I wouldn't.

Q. Isn't it a fact, also, Mr. Dyer, that Mr. Spriggs did the painting or had it done?

A. Well, now, I did part of the painting.

Q. Yourself, personally?

(Testimony of Charles E. Dyer.)

A. Yes, personally, myself.

Q. Part of it?                    A. The outside of it.

Q. How is that?

A. The outside of the store, and the apartments.

Q. And you know that Mr. Spriggs did the rest?

A. No, I don't know that he did. [133]

Q. You don't know who?

A. No, I don't.

Q. Nor how much it cost?

A. That is right.

Q. Now, Mr. Dyer, this store building which you say was 22 by 35, or a total of 770 square feet?

A. That is the best of my recollection, yes.

Q. Isn't it a fact that in 1947 that type of construction was costing an average of approximately \$7.00 a square foot, or \$8.00?

A. No, no, sir.

Q. How many, how much would you say?

A. That is, I am speaking of the average cost of that type of construction on the square foot basis with the eleven foot ceiling and at least in the shape you saw it when you left it.

Mr. Murlless: I object unless he qualifies that with "if you know".

Mr. Parker: \$6.00 a square foot.

A. Yes, you could make good money at \$6.00.

Q. You think that would be a reasonable cost price or contract price?

(Testimony of Charles E. Dyer.)

Mr. Murless: The question has been asked [134] and answered.

The Court: Overruled.

Mr. Parker: Could you make money at \$6.00?

A. You sure could.

Mr. Murless: What?

A. You could make money at \$6.00.

Q. In other words, you think that would have been a fair, reasonable price at that time for that type of construction? A. That is right.

Q. Then at \$6.00 per square foot, 770 square feet, at \$4,670.00, would it?

A. That's at \$7.00 a square foot.

Q. Okay, sir, did you take a contract on apartment units you refer to?

A. A company contract?

Q. Yes, sir. A. No.

Q. You just worked on those, as I understand it?

A. That is right; I was running the job for Mr. Spriggs.

Q. And Mr. Spriggs was paying you and footing the bills? A. That is right.

Q. And you left that job somewhat before it was finished? [135] A. Yes.

Q. And at the time you left it, there was no roof on it?

A. I think the sheeting, I think the rafter or ceiling joists and sheeting was on them.

Q. But the roofing? A. No.

Q. The doors weren't hung? A. No.

(Testimony of Charles E. Dyer.)

Q. Were the plumbing fixtures all in?

A. No.

Q. In other words, you left quite a while before the job was over?

A. I left, you might say, when I got the shell up.

Q. You got the shell up?

A. Outside walls and the rafters and sheeting; I think that's when we disagreed and the roof wiring.

Q. And you and Mr. Spriggs disagreed?

A. Yes.

Q. You had a falling out of some kind? We are not interested in that.

A. We disagreed to disagree.

Q. And did he pay you for your labor?

A. Yes. [136]

Q. Do you remember how much he paid you for your labor on the three units?

A. No, I don't, because he was paying so much an hour.

Q. And he was supplying the materials?

A. That is right.

Q. And also paying other workmen on the job, or were you the only one there?

A. Well, now, there is a little sticker in there.

Q. What do you mean by that?

A. I paid off an electrical bill on that of \$75.00, so somewhere in the deal I either agreed to purchase the labor for so much, I forget, anyway, I had to pay the electrical bill.

Q. My question, Mr. Dyer, was in reference to



(Testimony of Charles E. Dyer.)

whether there were other workmen on the job and who paid them?

A. One of them I paid, that was on contract.

Q. The electrician you paid?

A. That is right.

Q. \$75.00 and Mr. Spriggs reimbursed you, didn't he?      A. Not that I know of.

Q. You claim that he still owes you that?

A. Yes, sir, I still do. [137]

Q. He paid you otherwise, though, didn't he?

A. Yes.

Q. Outside of the electrician, he paid any other workman that worked on the building, as far as you know?      A. That is right.

Q. Did you just volunteer to pay the electrician?      A. No, sir, I was forced to pay it.

Q. You were forced to pay it? That is all, Mr. Dyer. Thank you.

The Court: How many more witnesses do you have?

Mr. Murlless: Three, four, or five.

The Court: Long or short?

Mr. Murlless: Short. The first is particularly short.

The Court: How about the rest?

Mr. Murlless: A couple are relatively long if it works out in my expectations.

The Court: You know, tomorrow is Friday and next day is Saturday.

Mr. Murlless: I was going to try to finish this evening.

The Court: Recess. [138]

(Thereupon the Court recessed at 3:35 o'clock p.m.)

(The roll call of the jury having been waived, and all persons previously mentioned being present, the Court reconvened at 3:50 o'clock, and continued as follows:)

Mr. Murlless: Mr. Charles Mathus.

CHARLES A. MATHUS

having been first duly sworn, took the stand and testified on behalf of the Government, as follows:

Direct Examination

Q. (By Mr. Murlless): I understand your name is Charles A. Mathus? A. Yes.

Q. M a t h u s ? You are a licensed building contractor? A. Yes.

Q. What was your work in 1945?

A. I was a carpenter.

Q. How long have you lived in Arizona?

A. Since '37. [139]

Q. All this in the City of Phoenix?

A. Yes, sir.

Q. And in connection with your work, do you know the defendant Claude S. Spriggs?

A. Yes, sir.

Q. And in what connection?

A. Well, I did some building, I built three little units for him back in '46 or '47, I don't remember the exact year.

Q. And where were, was that building done?

(Testimony of Charles A. Mathus.)

A. Just east of 20th on Henshaw.

Q. Which side of the street? A. North.

Q. And to your right there, you will find a schematic drawing of a group of squares, does that call to mind anything in connection with the building that he did?

A. Yes, that's similar to the layout.

Q. In that connection, which, do you recognize the squares as schematic of and representing the units there? A. Yes.

Q. And what of those units did you build?

A. According to the number is 8, 9 and 10.

Q. Where?

A. Next to the store building. [140]

Q. Would you point them out?

A. 8, 9 and 10 (indicating).

Q. When did you do that building?

A. I couldn't tell you the exact time, but in '46 and '47.

Q. Under what kind of arrangements or contract was it done?

A. We had a verbal agreement.

Q. And did you execute this verbal agreement?

A. Yes, sir.

Q. And both you and Mr., the defendant, Mr. Spriggs, did operate under a verbal agreement that was completed about the date and time you mention, is that right? A. Yes.

Q. Under that connection, what did you do under that agreement?

A. I put up the building. In other words, the

(Testimony of Charles A. Mathus.)

footing, the floor and the frame work inside, we put up two by four framework inside, we put that up, I believe we put paper on the studs and the wire. We couldn't, if I recall, we couldn't have gotten metal lathe. We used heel screen for lathe. I laid the blocks and put on the roof.

Q. And did you make—— [141]

A. I didn't do the plastering. There was another party did the plastering.

Q. Did you make an estimate of what that could, would cost? A. Around \$3,000.

Q. For labor and materials? A. Yes.

Q. With the exception of plastering?

A. Yes.

Q. You put what the plaster went on?

A. That's right.

Q. In that connection, did you complete that arrangement under the verbal contract?

A. There is one thing that isn't clear in my mind, is to whether I put in the kitchen cabinets or not.

Q. You are not certain about the kitchen cabinets? A. No.

Q. That's been some time ago? A. Yes.

Q. In that connection was \$3,000 due?

A. Within the neighborhood of that. It could possibly have been a little more. [142]

Q. For three units? A. That's right.

Q. That was the aggregate for three units?

A. Yes.

Q. Approximately a thousand dollars apiece?

(Testimony of Charles A. Mathus.)

A. Yes.

Q. For labor and materials?

A. That's right.

Q. Thank you very much; your witness. [143]

### Cross Examination

Q. (By Mr. Parker): Mr. Mathus, I understand that you did not do the plastering and that according to your present recollection you are not sure that you did the kitchen cabinet work?

A. I don't recall if I did or not.

Q. Did you do any painting?

A. It seems to me the plaster that went on the wall was colored plaster, but I don't recall that.

Q. Any woodwork at all in the building?

A. I don't think I did anything.

Q. No painting? A. I don't believe so.

Q. Did this sum which you mentioned include the furnishing of all of the plumbing fixtures such as the drainboard and kitchen sink and——

A. Mr. Spriggs furnished all the material.

Q. He furnished all the material?

A. Yes.

Q. And the figure that you mentioned has to do with labor?

A. No; the labor came out of the estimated price.

Q. That was an estimated price, but you didn't contract with him to furnish any materials?

A. No. [144]

Q. I believe you also stated at that time the



(Testimony of Charles A. Mathus.)

World War II wasn't too far distant at that time—were there shortages of materials?

A. Very short, yes.

Q. Was there a black market in materials in this area?

A. Well, there were, all right. There was a few selling over standard prices all right. It was hard to get good materials.

Q. And it was very difficult to get good materials and isn't it true, Mr. Mathus, that small contractors or property owners building at that time, and particularly Mr. Spriggs, you got whatever you could get wherever you could get it—isn't that true?

A. That was about the way it was at that time.

Q. At whatever price you were required to pay to get it at the time?

A. Most of the prices were general, that's right. Of course, a person needed some kind of a material, maybe a small quantity, might be willing to give over market price. But they watch it pretty closely.

Q. You say you couldn't get metal lath, so you used some kind of chicken wire?

A. I called it hardware cloth. About half-inch [145] mesh, I believe. Hardware cloth.

Q. Do you happen to know whether or not it is a fact it, that that wire which you used there as make-shift actually cost considerably more than metal lath?

A. I think it did cost a little more.

Q. Now, Mr. Mathus, on this job there, how

(Testimony of Charles A. Mathus.)

would you class that construction with regard, I mean, when the thing was finished, with regard to whether it was first, second, third, fourth or fifth class?

A. It was built cheaply. I'd say it was about a third-class building.

Q. Now, from your experience in this building is it not a fact that buildings constructed as this one was would have a shorter life than a piece of good construction?

A. Well, naturally, if you get shoddy materials you don't have quality.

Q. And isn't it a fact that that type of building deteriorates or depreciates much faster than a piece of good construction?

A. Well, it would be my opinion.

Q. Now, didn't the shortage of materials in some particulars affect even the normal building procedure there as, for instance, weren't there [146] times when you couldn't get cement blocks, when you should have had them, and had to get the cart before the horse?

A. Yes; I had that trouble several different times. Go ahead and put up framework, which we did on this job; put up framework.

Q. When actual sound business construction you would put the other up first?

A. That's right; in order to speed progress.

Q. Late in the construction did you have occasion to concern yourself with whether or not you were staying within your estimated costs to him?

(Testimony of Charles A. Mathus.)

A. I found myself running over.

Q. And in that connection what did you do?

A. Well, the last couple of weeks I worked for free.

Q. Because you were getting over the \$3,000 mark that you had estimated on the three units?

A. That's right.

Q. Thank you very much.

The Court: That's all.

Mr. Parker: As a matter of fact, wasn't the figure nearer \$3,400 that you estimated?

A. I couldn't recall.

Q. Possibly thirty six? [147]

A. I don't think that much. I believe if it would have been that high, I would have had 35 in mind rather than \$3,000.

Q. But it might have been four?

A. It could have been better than \$3,000.

The Court: That's all, I think.

Q. Could this witness be excused?

The Court: Yes.

Mr. Murlless: If your Honor please, at this time, we move for the admission of Government's 1 and 3 at this time.

Mr. Parker: Same objection.

Mr. Murlless: Mr. Sparks, please—or, Mr. McRae.

## WILLIAM McRAE

having been previously sworn, retakes the stand and testified on behalf of the Government as follows:

## Direct Examination

Q. (By Mr. Murlless): I think in this regard, from Government's 1 in Evidence, you did read the depreciation schedule in the 1946 return?

A. That is right.

Q. How many items is it comprised of, sir?

A. Five in connection with Government's 3 in Evidence.

Q. Will you read the depreciation schedule in the 1948 return?      A. Three items.

Q. What are they?

A. First one is kind of property cement, year acquired 1944, cost \$10,500, depreciation claimed, \$1,050.00. Next, cement, acquired 1945, cost \$20,000.00, depreciation claimed \$2,000. Third item, cement, year acquired 1945, cost \$20,000.00, depreciation claimed \$2,000.

Q. Now, will you look at the amended return, first, if you will, sir, what was the date of the figure of the original return for 1948?

A. January 24, 1949.

Q. Was there any tax paid on that return?

A. No.

Q. Will you look for an amended return for 1948, sir?      A. Yes.

Q. And what date was it filed?

A. January 16, 1950.



(Testimony of William McRae.)

Q. And will you look at the depreciation schedule and read it to the jury?

Mr. Parker: I object. It is not within the [149] issues, and particularly this amended return.

The Court: What do you claim for it?

Mr. Murlless: Because the \$20,000 item has been dropped out, if your Honor please. It shows intent.

The Court: What?

Mr. Murlless: Knowledge and intent, and for that purpose alone, if your Honor please.

The Court: What item are you trying him on?

Mr. Murlless: \$20,000 item which was duly indicated on 1947 return.

The Court: Dropped out, you claim, in a later return of 1948?

Mr. Parker: If your Honor please, may I say only this, and to point up the views of this. February of 1949, the Internal Revenue Service provided an arbitrator; their idea of what the depreciation tax schedule should be, and this taxpayer tried to follow the pattern he laid down, and now because we filed a return, an amended return, attempting to go by this, he is to be charged with fraud when he was trying to follow their instructions.

The Court: Admitted.

Mr. Murlless: May this witness be excused?

The Court: Wait a minute.

Mr. Murlless: Pardon me.

Mr. McRae: Want me to read the depreciation schedule?



(Testimony of William McRae.)

The Court: He is through with asking questions.  
Cross examination. Aren't you through?

Mr. Murlless: I can do it at a later time.

Mr. Parker: No questions.

Mr. Murlless: I am through with him now, if your Honor please. Thank you, sir.

### JAMES STRUCKMEYER

a witness of legal age, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, took the stand on behalf of the Government and testified as follows:

#### Direct Examination

Q. (By Mr. Murlless): And will you spell your full name, please?      A. S t r u c k m e y e r.

Q. What is your work?

A. I am a lawyer.

Q. And for how long has that profession occupied you? [151]

A. About fifteen years.

Q. Where do you live?      A. In Phoenix.

Q. And for some years?      A. Since '41.

Q. In this connection, in connection with your work, do you know the defendant Claude S. Spriggs?      A. I do.

Q. And over what period of time does that acquaintanceship extend?

A. I think I may have met him before, but I met him roughly in 1943 when he came to my office and was an associate.

(Testimony of James Struckmeyer.)

Q. And you did know him, then, from then until——

A. Now.

Q. And in connection with the defendant Claude E. Spriggs, will you state whether or not you ever had a conversation with him with respect to the methods of reporting or failing to report income?

A. I did as to the method of reporting income.

Q. In that connection, in general if you can, and will you characterize, or the conversation [152] when did it happen and who was present?

A. Mr. Spriggs and I were associated. We had some conversations in my office or perhaps in his office; they were adjoining. I remember one such conversation that occurred in company with Mr. Harold Whitney, a lawyer, while we were crossing the street. The, at that time, I was complaining because I had to pay an income tax. Mr. Spriggs stated that there was no reason you should pay an income tax. Words to this effect, that a person would be foolish to pay an income tax.

Q. And did he state why?

A. Yes. I am not sure that he stated in those words why. He either stated or intimated it was a matter of taking the proper returns on your income, and that if you owned property, the depreciation allowed, I never quite understood it, would eat up the income so you wouldn't have to pay a tax.

Q. Made your depreciation great enough, you could make more than your income, and wouldn't pay a tax?

A. Yes.

(Testimony of James Struckmeyer.)

Q. Thank you very much.

Mr. Parker: About how long were you and [153] Mr. Spriggs associated in the practice of law?

A. Three or three and a half years.

Q. When was it terminated?

A. About 1946 or 7.

Q. You don't know the exact date?

A. No, I do not, I believe it was the fall of '46. I believe he came to the office in the fall of '43, but I don't know the exact days.

Q. Then in all probability, the conversations you have been relating, the conversation you related occurred in '46 or sometime prior to that time?

A. '45, '46, '47; I believe, Mr. Parker.

Q. Was he——

A. We met quite often, I am sure, during '47, whether he was with me in the office or not, I don't know.

Q. Now, Mr. Struckmeyer, what was the occasion of your terminating the relationship with Mr. Spriggs in the practice of law?

A. I think it was by mutual agreement, Mr. Parker. He was very busy with his property. More busy with the property than he was with law, and he left our office, I think, by mutual agreement.

Q. Was it the fact you had need of a lawyer [154] who could devote, or would devote his full time to law, and Mr. Spriggs wasn't in that position, and you, therefore, by mutual consent, terminated the relationship? A. Yes.

Q. Got another lawyer that could do it?

(Testimony of James Struckmeyer.)

A. Yes.

Q. Just prior to the termination, Mr. Spriggs wasn't doing, in the practice?

A. No, he was busy with the property, spending most of the time with the property, I think.

Q. Mr. Struckmeyer, will you relate to the Court and the jury the nature of the circumstances under which these conversations you have told in response to Mr. Murlless' question arose? Give us the setting of those conversations.

A. Well, it is sort of personal. In our office, we don't always work. We spend some time just talking. I suppose most law offices do. Claude and I were friends, and as I say, when I would complain that I had to pay income tax once or twice, he made this statement there was no reason I should. Mostly just talk.

Q. Well, was it in the tone of kidding?

A. To me it was, yes. I took it as such. [155]

Q. You didn't take it seriously, did you?

A. No, I didn't know, I didn't.

Q. You weren't convinced that he meant literally everything he said?

A. No, I knew Claude didn't mean literally everything he said.

Q. Claude was quite a talker, was he not?

A. Yes, yes, he was.

Q. And these sessions that you refer to might be referred to in vernacular as just recreational bull sessions, or something of that sort?

A. Yes, they might be so called.

(Testimony of James Struckmeyer.)

Q. And isn't it true, Mr. Struckmeyer, that he recommended that you ought to acquire some property for income purposes or for business purposes, and that it might improve your situation income tax wise? A. Yes, he did, yes.

Q. And is it not true that in substance what he said was in substance at least, that many people paid more taxes or paid taxes that they shouldn't, or paid more taxes than they should because they didn't claim all of the deductions to which they were entitled?

A. I took it that this was what he meant, [156] yes. He was worried about my business ability, Mr. Parker. This upset me as not being a very good businessman myself, and generally our talk was just back and forth about that.

Q. I see. You admitted that you are not a very good businessman?

A. The Government told me that, the income tax people did.

Q. Very good, Mr. Struckmeyer. Thank you very much.

Mr. Murlless: No further questions. Mr. Sparks, if your Honor please.



C. L. SPARKS

a witness of legal age, being first duly sworn to tell the truth, the whole truth and nothing but the truth, took the stand and testified on behalf of the Government, as follows:

Direct Examination

Q. (By Mr. Murlless): In connection with this case, you have been sworn, and in that connection, you brought a letter, as I recall, together with a segregation in the letter of certain property belonging to Claude E. Spriggs during 1947 upon which were [157] improvements?

A. That is correct.

Q. Now, with respect to that, that it showed also tax values as a part of your official records as for Maricopa County?

A. The amount of the taxes due on a particular thing.

Q. Those are part of the official records in your office as reflected by your official documents in the Court?

A. In the treasurer's office, yes, sir.

Q. Move for admission of Government's 19 and then Government's 20 for Identification.

The Court: What do you want to prove by them?

Mr. Murlless: I want to locate and affix the addresses of the items that are not described with particularity in the income tax returns which—

The Court: Haven't we covered that by other testimony?

(Testimony of C. L. Sparks.)

Mr. Murlless: I doubt, if your Honor please, that without having the improvement situation reflected in this matter, that it is complete.

Mr. Parker: If your Honor please, that in addition to the former objections which I wish to [158] now renew, I further object that if that is the purpose for offering this evidence, this is an inferior quality of evidence for this purpose and contains extraneous matter which certainly should not be before us.

The Court: This one you have given the history. Was improved by so-and-so that has been on the stand.

Mr. Murlless: Yes, sir.

The Court: Then what about the other property in the testimony?

Mr. Murlless: Yes, sir, the Government's Exhibit land 2 doesn't segregate them as to Henshaw Road and other. It segregates them. Frame, cement, cement, cement, when acquired and there and then and through other witnesses which have been able to locate them with the street address. This is the only case in which the legal description and street addresses are shown.

The Court: I'll admit them provisionally. But whether they go to the jury, I reserve a decision.

Mr. Parker: What are the numbers?

Mr. Murlless: 19 and 20.

The Court: Cross examination, provisionally. I beg your pardon. Mr. Sparks, you have never seen any of this property?

(Testimony of C. L. Sparks.)

The Witness: Not to my certain knowledge.

Mr. Parker: Never——

The Witness: These are the records of the former administration, filed in the office.

Q. And you are not suggesting that as to these exhibits 19 and 20, that the assessed valuations made by your predecessors in the office in a manner have any connection with the value of the property. They don't reflect the actual value of the property?

A. No. I'll state in this particular, if you will notice, that the present assessed valuation and average 30 per cent of fair market value.

Q. The hoped for formula of 30 per cent of fair market value?

A. That exists in my office at this time.

Q. That is your instruction to your field man?

A. That is the records in my office from surveys from different parts comparing the market against the assessed values.

Mr. Murlless: And the assessed valuation, you state is 30 per cent of the fair market value [160] with respect to the pieces of property where a valuation is placed?

A. I didn't intend to convey that in those particular words.

The Court: This has nothing to do with this case. So, you are excused now. What the assessed values are, or fair market value.

Mr. Murlless: Thank you.

## LLOYD TUCKER

a witness of legal age, being first duly sworn to tell the truth, the whole truth and nothing but the truth, took the stand on behalf of the Government, and testified as follows:

## Direct Examination

Q. (By Mr. Murlless): Name please, for the records? A. Lloyd M. Tucker.

Q. What is your work, Mr. Tucker?

A. I am a special agent for the Intelligence Division of the Internal Revenue, sir.

Q. Do you know the defendant Spriggs?

A. Yes.

Q. How long have you been an Intelligence Agent? [161] A. Since 1945.

Q. How long have you known Spriggs?

A. Since late in '48.

Q. In 1948, were you located in Phoenix for your place of business? A. Yes, I was.

Q. And you have been in that work as a governmental agent since 1945? A. Yes, sir.

Q. And for how long had you been in Phoenix—1948 when you met the defendant Spriggs?

A. Eight years.

Q. Now, in that connection, will you state the circumstances under which you made his acquaintance?

A. Yes. I was requested by the office of the Collector of Internal Revenue at Phoenix, Arizona, to participate in the investigation of the tax lia-

(Testimony of Lloyd Tucker.)

bility of Mr. Spriggs together with Mr. Arthur Beals, who was at that time a deputy collector.

Q. And it was in that connection that you met him?      A. Yes, sir.

Q. When was the first time you saw him?

A. I first met him on October 20th, 1948. [162]

Q. And where?

A. In the office of the Collector of Internal Revenue in Phoenix.

The Court: Who was present?

A. Mr. Beals was there.

Q. Who is he?

A. Mr. Beals is presently a Certified Public Accountant and a Professor of Accounting at Tempe College. At that time he was in Government service.

Q. Revenue agent?

A. Deputy collector.

Q. For Arizona?      A. Yes, sir.

Q. And where did that first meeting take place?

A. In the office of the Collector here in Phoenix.

Q. Did you have occasion at that time or Mr. Beals have occasion to take certain records from the defendant Caude E. Spriggs?

A. I did, no.

Q. You had not?      A. No, sir.

Q. Had certain records been available to you?

A. They were available on October 20th, to me.

Q. In that regard, what did you do?

A. Beginning on October 20th, and continuing for approximately five months period up until March of 1949, I held several conferences with Mr.



(Testimony of Lloyd Tucker.)

Spriggs. I interviewed numerous witnesses, I traveled considerably in Graham County and Maricopa County. I inspected public records, I inspected records of title companies, I inspected records of the Arizona Industrial Commission, I examined some bank records, and I made some examinations of records which had been kept by Mr. Spriggs.

Q. And will you state what you did on this date, that is October 20th, the first day you met him, and if you had conversations with him, tell the jury the questions that were asked, and the answers, and the general tenor of that conversation?

A. Well, on that date, our conversation related principally to this property located at 2008 East Henshaw Road. We had the income tax return——

Mr. Parker: I object. It has no proper foundation laid, and if this is leading up to [164] something which counsel claims is in the nature of a confession or something, I don't know what it is. I object to it on the ground that the status of the record in my humble opinion does not show adequate proof of corpus delicti, and doubt the ability——and this is no——

The Court: Overruled.

The Witness: The conversation related to the Henshaw Road property.

Q. What questions and answers were returned to the best of your recollection?

A. We had income tax returns which Mr. Spriggs had filed before the three of us.

(Testimony of Lloyd Tucker.)

Q. Does that include Government's 2 in Evidence?  
A. Yes.

Q. The income tax return for 1947?

A. That is correct.

Q. What other income tax return?

A. Then we had the return filed for '44, '45, '46 and possibly 1943.

Q. And you did have then Government's 3 in Evidence here, that is 1946?

A. That is right.

Q. Go right ahead.

A. We discussed the \$40,000 cost. [165]

Mr. Parker: Just a moment. That is not responsive to the question. The witness was asked to state what he said and what the defendant said, and now he is delivering conclusions about the conversations. Move to strike it.

The Court: Denied. Continue.

The Witness: I asked Mr. Spriggs if the \$40,000 cost basis which he had placed on his return on Henshaw return, was the correct cost basis of that property.

The Court: For what year?

The Witness: Referring to the income tax return for 1947. Henshaw property. I asked him if that was the correct cost, if that figure shown on the return represented the investment in that property. The money which he had spent there.

Q. Refer to Government's 1 in Evidence, it does reflect \$40,000, but not in one item, and will you

(Testimony of Lloyd Tucker.)

state to the jury what you asked and answered on his returns about that——

The Witness: Yes, Mr. Spriggs that it would be, the \$20,000 identified as being of cement construction and the second \$20,000 item also identified as being cement construction was the Henshaw Road property. [166]

Q. Both of them were? A. Yes.

Q. As to the Henshaw Road property?

A. Yes.

Q. Will you proceed?

A. Mr. Spriggs said yes, that he had actually had invested \$40,000 in the property. I asked him where he could have obtained \$40,000 to invest in the property. He had his returns before us, and he stated that he had received income from the practice of law and that he was an attorney and he said that he had made profits from buying and selling real estate. I said to Mr. Spriggs that there were no profits from buying and selling real estate shown on the return, and he stated that he wasn't obliged to show gains from sale of real estate. I told him that the reporting of capital gains with particular regard to real estate, was an elementary point. A tax law, and he said he had returned hundreds and he knew that he didn't have to report gains from the sale of real estate. I asked him again at least it is one other time, if in fact the \$40,000 was his correct investment in the Henshaw Road property, and he stated that it was. This conversation went on for [167] several hours. It started

(Testimony of Lloyd Tucker.)

in the morning and lasted until late in the afternoon. Late in the afternoon, Mr. Spriggs made the statement "you fellows have got me charged with a lot of income. Maybe I don't have \$40,000 invested in that property." So, I asked Mr. Spriggs to go home and inspect all his records that he had available to him relating to the Henshaw Road property. I asked him to talk over with his wife and refresh his memory and do everything that he could do to establish what the cost of the property was, and he stated that he would.

Q. And did you have occasion at the later time to talk to him again?

A. Yes, I met him again on January 6, 1949.

Q. And again, who was present?

A. Mr. Beals was present and Mr. Spriggs.

Q. And Mr. Beals is here in the courtroom, is he?      A. Yes, sir.

Q. Where was this meeting consummated?

A. It also took place in the office of the Collector of Internal Revenue.

A. At about what time of day, if you can remember?

A. I don't, I think, recall the time of day, [168] Mr. Murlless.

Q. And what happened in that connection with that meeting?

A. I asked Mr. Spriggs if since the date of our last meeting if he had occasion to renew my records or determine the true cost of the Henshaw Road property. Mr. Spriggs said, yes, that he had

(Testimony of Lloyd Tucker.)

reviewed all of the records he had, and he and his wife had discussed many hours discussing the cost of the property and he was now of the opinion that the cost of the property could even have cost him less than \$40,000. I asked him if he was willing to give a voluntary sworn statement and affidavit stating that, and he said, yes.

Q. Did he? A. Yes.

Q. When? A. January 6, 1949.

Mr. Murlless: I hand you Government's 22 for Identification, and ask you if you have seen that before, Mr. Tucker?

A. Yes, this is the statement which I typed at the Collector's office on January 6.

Q. Is it one that you observed the signature of?

A. Yes, sir, I saw it signed.

Q. Move its admission in evidence, if your Honor please.

(Thereupon the document was handed to counsel.)

Mr. Parker: May I ask a question on voir dire. Mr. Tucker, referring to this Exhibit Number 22 for Identification, and I observe particularly on page two that this is some material written in this in longhand in pen. That is your writing, isn't it?

A. Yes, that is my writing.

Q. Did Mr. Spriggs put his initial also on the margin? A. Yes, sir.

Q. Before or after you wrote the part that is in longhand? A. After I wrote it.

Q. After you wrote it? A. Yes.



(Testimony of Lloyd Tucker.)

Q. If your Honor please, I object upon the grounds there is no proper foundation laid, and upon the further grounds that the exhibit contains immaterial and prejudicial matters which have no bearing upon this case and the—all right.

The Court: I'll have to read it first. Let [170] me have it. Go ahead with the examination.

Mr. Murlless: Go right ahead after the statement was taken.

A. That was the substance of what transpired.

Q. Did he state at that time that he had an opportunity to go over the records with his wife?

A. Yes, he said they had spent many hours discussing it.

Q. Did you have occasion to see Mr. Spriggs at an earlier time, or within a few days of that?

A. Yes, I next saw him on January 23rd, 1948.

Q. And what occurred then, who was present?

A. Mr. Beals was present and the meeting occurred in the office of the Intelligence Division of the Internal Revenue Service in the Security Building here in Phoenix.

Q. What happened there, if you can state what questions and answers you had, if a conversation was had?

A. We devoted several hours of that day talking to Mr. Spriggs asking him questions, looking at his records relating to the assets and liabilities of which he had of certain dates [171] with particular regard to January 23rd, we were talking

(Testimony of Lloyd Tucker.)

about the assets and liability which he had for the years ended 1941, 1942.

Q. Well, with respect, let's confine it, if we may, to his situation in 1947. To the best of your knowledge, was anything done or conversation had, that transpired with respect to the tax situation in 1947?

A. No, not on that date.

Q. When did you have a chance next to see him?

A. On the following day.

Q. What, if anything—

A. Mr. Beals was present and the meeting took place in the office of the Intelligence Division of the Revenue Service in the Security Building.

Q. And on that date, the discussion continued with regard to Mr. Spriggs assets and liabilities of other dates?

A. On that date, we were discussing the years and in 1943 and 1944.

Q. Did you have occasion at that time to discuss with him the significance of his tax situation of the year 1947?

A. I don't think that on that date that we [172] did.

Q. Did you have occasion to talk with him at a later time?

A. The following day.

Q. What day was that, sir?

A. That was January 25th.

Q. All right, did you have occasion to talk with him with respect to his situation in 1947 at that time?

A. Yes, not with particular respect to 1947 on

(Testimony of Lloyd Tucker.)

that date, as on the previous date. We were discussing the assets and liabilities which he held as of the year 1945 and 1946.

Q. Did you have occasion during those prior days, about which you have spoken, did you have occasion to talk concerning the dates of the building of the various units on Lots 47 and 48 Eubank Tract?

A. The portions of the conversations related to the Henshaw Road properties and other properties which he owned.

Q. When was the information complete, or what you have of it complete concerning that Eubank Tract property?

A. As of January 26th and January 27th.

Q. Now, this, in that connection, and you [173] did then have occasion to talk to him on January 26th and 27th?      A. Yes, both days.

Q. With respect to January 26th, 1949, will you state what happened?

A. On January 26th, 1949—on that day we talked to him about his assets and liabilities for the year ending 1945.

Q. Did that include Eubank Tract?

A. Yes, it did.

Q. Very well, go ahead.

A. We drew up a net worth statement, that is a financial statement disclosing his assets and liabilities and net worth and on that day, he read the statement and signed it.

Q. Do you have that statement, sir, or do I?

(Testimony of Lloyd Tucker.)

A. I think I have it. Later on that day, we prepared a net worth statement for Mr. Spriggs for the calendar year ended on December 31, 1946. Mr. Spriggs read that statement over and he stated that the net worth had increased too much, and therefore, he wouldn't sign it.

Q. Very well, and on the next day, did you have a further occasion to talk to him?

A. Yes, on January 27th with him again.

Q. Now, this series of conversations had [174] involved among other things, the investments with respect to Eubanks Tract, Lots 47 and 48 with which there has been testimony here?

A. Yes.

Q. And will you state in that regard, if that compilation was made with respect to those units, or with what did it consist? Did you have the compilation of that of each unit. The Lots 47, 48 of Eubanks Tract?

A. Yes, I have that.

Q. Do you have the original of that?

A. Yes, it is on the table.

Q. All right, I am afraid you will have to come down now, Mr.—maybe not. I hand you what appears to be a schedule of the assets of Eubank Tract. Is that the compilation that was concluded on or about the 27th day of January, 1949?

A. Yes, sir.

Q. It will be marked for identification, if your Honor please.

(Thereupon the document was marked as Government's Exhibit 23 for Identification.)

(Testimony of Lloyd Tucker.)

Q. Now, this appears here, an original and one copy, is that right, sir?

A. Yes, that is what——

Q. Handing you Government's 23 for Identification, [175] will you state to the jury what that represents?

A. Yes, it shows on here, on this schedule the number of dwelling units located on the property, a storeroom, a store building, a restaurant and a barber shop. It shows the dates that these various structures were acquired or completed. It shows the cost of the furniture that was included in the dwelling units, it shows the depreciation rate applied to the store buildings, the dwelling units and the furniture and the amount of depreciation allowable for the year 1947.

Q. Now, the depreciation allowable is something you put on afterwards, is that right?

A. Yes, sir.

Q. Now, with respect to the entries and the items or the units that are listed or the furniture that is in connection with each, is that a result of this series of conversations that you had with Mr. Spriggs concerning his net worth on the date you have stated that culminated in the January 27th, 1949, meeting?

A. Yes, sir, that is right.

Q. And in those conversations, to each of those items your and his mind did come to agree [176] that is what it was?

A. Yes, sir.

Mr. Parker: This is a matter that has come to



(Testimony of Lloyd Tucker.)

my mind that is the very aggressive and leading questions of this witness, who are presumably able to perform their own answer without the aid of counsel.

The Court: Give him that.

Q. You have a copy that counsel could be provided with, have you not? A. Yes.

(Thereupon the document was handed to counsel.)

Mr. Parker: It is being offered in evidence?

Mr. Murlless: I didn't, but I will. I offer Government's 23 in Evidence.

Mr. Parker: I most certainly object. It is wholly incompetent. Not relevant and no proper foundation. I certainly ask the Court on inspection——

The Court: Are there cost figures?

Mr. Parker: Some sort of computations.

The Court: Yes, sir; cost figures. Where do you get those cost figures?

A. From conversations from Spriggs.

Q. He gave you those costs? [177]

A. Yes, sir.

The Court: It is admitted. 22 is admitted also.

Q. Going back for the moment, to the first of your conversation, Mr. Tucker, that is on account, correction, it is not the first, it is January 6th conversation, at which you stated that a statement was taken; will you with as much speed as possible, read that statement?

The Court: What is it, 22?

A. Yes, sir.

(Testimony of Lloyd Tucker.)

The Court: I don't want him to read it. You can read it when it comes time to argue.

Mr. Murlless: Now, Mr. Tucker, at a later time did you have occasion to talk to Mr. Spriggs again, that is, January 27th, 1949?

A. Yes, I talked to him on that date.

Q. And on that date, did you have occasion to take a statement from him? A. Yes, sir.

Q. Who was present? A. Mr. Beals.

Q. Did you warn him of his constitutional rights? A. Yes, sir.

Q. Where did that happen? [178]

A. In the office of the Intelligence Division, Revenue Service.

Q. Tell me what time of the day?

A. I am quite sure it was in the afternoon.

Q. And were the questions asked and answered on his return, about his tax situation as of the year 1947? A. Yes, sir.

Q. I hand you Government's Exhibit—may it be marked in evidence, if your Honor please?

(Thereupon the document was marked as Government's Exhibit 24 for Identification.)

Mr. Murlless: I hand you Government's 24 for Identification, and ask you if that is the statement about which you have just testified?

A. Yes, sir; this is the statement.

Q. Now, and where was that taken?

A. In Phoenix, in the Security Building.

Q. Was that a time when questions were being

(Testimony of Lloyd Tucker.)

asked and answered concerning the tax situation in 1947?      A. Yes, sir.

Q. Does it purport to be by him?

A. Yes, sir.

Q. Signed by him in your presence?

A. Yes, sir. [179]

Q. I move for admission in evidence, if your Honor please, of Government's 24.

(Thereupon the document was handed to counsel.)

Mr. Parker: This is a rather lengthy document and it will take some time to inspect, if you can pass it now.

The Court: Yes, pass it.

Mr. Parker: Or do you—all right.

Mr. Murlless: With respect to Government's 22 in Evidence, will you state what was the aggregate amount of cost basis that you arrived at with Mr. Spriggs?

The Court: You got it the wrong number.

Q. I understood the Court said it was admitted, too. Pardon me. 23. That's with respect to Government's 23 in Evidence.

Mr. Parker: If your Honor please, I certainly object to that. If, that isn't signed by Spriggs. That is just some tabulation.

The Court: You mis-heard it.

The Witness: The total investment as shown in the amount of \$19,324.10.

Q. Is that the same figure to be found in Government's 24 for Identification?

(Testimony of Lloyd Tucker.)

A. Yes, sir. [180]

Q. That is the other statement?

A. Yes, sir.

Q. Same figure? A. Yes, sir.

Q. Very well, sir. Now, will you go ahead with what happened that day, other than the taking of this statement? A. Of——

Q. January 27th, 1949.

A. It was about all that transpired on that date.

Q. Did you conduct any other investigation in this regard, sir?

A. What I related was pretty well encompassed.

Q. Very well. Subsequent to this time, January 27th, 1949, did you have occasion to compute to some extent the depreciation that was properly allowable on the Eubanks property as is represented in Government's 23? A. Yes, sir.

Q. You have done that at some length?

A. Yes, sir.

Q. Will you state the basis upon which it was done and what the aggregate of that depreciation allowable is?

Mr. Parker: I object to that for a number [181] of reasons. One is of multi-fariousness. Contains more than one question. Secondly, as a matter of law, there is no prescribed formula for depreciation.

The Court: You keep missing something. He testified that there was, what your client agreed to as a proper—your bill of particulars doesn't make any point about the wrong rate of deprecia-

(Testimony of Lloyd Tucker.)

tion being claimed by the taxpayer. It simply states that falsely overstated the cost, and your testimony shows subject of course to what else has developed and the jury, that he claimed depreciation on \$40,000 on a cost of \$40,000, alleged cost of \$40,000, when in fact, the cost was just half.

Mr. Murlless: That is well, your Honor, and I am agreeable to that, but I hoped that we wouldn't have to comply with that bill of particulars.

The Court: You resist at giving a bill of particulars in the present case and I had in mind that you had given one before and I wasn't going to make you give one, but I also had in mind to hold you also, you wouldn't give me another.

Q. All right, then you have not had occasion to compute.

The Court: It doesn't make any difference. It is irrelevant on the basis of what I am saying. Your case, the amount of the cost. What was the true cost, \$40,000 or \$20,000, or at any rate, what was the something difference, was it less than \$40,000?

Mr. Murlless: Has the Court made itself clear to you?

The Court: It doesn't matter whether it is clear to him or not, it is clear to me.

Mr. Murlless: In that connection, what I ask you, can you sit there and compute the depreciation upon the cost basis as provided you by the defendant Spriggs?

The Court: That doesn't make any difference,



(Testimony of Lloyd Tucker.)

that is a matter of the argument. Your case is that he claims it was as great a cost as the basis of the depreciation, and in fact was. Now, let's keep it to that.

Q. I'd like to have this witness compute the tax, and I am not very good.

The Court: The case is that he charged twice as much on the cost basis as he is entitled to, but he is going to be subject to cross examination, and if you want him to compute the tax, what it should have been on your theory of [183] on \$20,000, rather than on \$40,000, I'll let him do it, but he can do it later on instead of now. Have you had a chance to read the document?

Mr. Parker: No.

The Court: Would you like the cross examination to go?

Mr. Parker: Yes.

The Court: Is this your last witness?

Mr. Murlless: We figured the day after tomorrow is Saturday, and this is our last witness.

The Court: Well——

Mr. Murlless: We figured the day after tomorrow is Saturday.

The Court: Well, let's see now, 1 o'clock. Ladies and Gentlemen, you are excused until 1 o'clock tomorrow afternoon.

(Thereupon the jury was admonished and excused until the following day.) [184]

(Thereupon the Court was reconvened on April 2nd, 1954, at 1:00 o'clock p.m.)

(Testimony of Lloyd Tucker.)

(Lloyd Tucker having been heretofore sworn, retakes the stand and testifies as follows upon direct examination.)

Mr. Murlless: If your Honor please, as I recall it, the last thing, about the last subject matter that was discussed last night was my question into what precisely was the issues we are confined to in this case pursuant to a Bill of Particulars. Now, I have become concerned, if your Honor please, because there is an exhibit in evidence that does not reflect the Court's judgment in that regard. That is my recollection of it. In that regard I will ask the Court to take Government's Exhibit No. 23 and I will, if the Court please, ask that certain parts of it be stricken to the end that the evidence complies with the Court's judgment on the last ruling as I recall it. It is the one there——

Mr. Parker: If the Court please, I have a general objection to that exhibit made by Mr. Murlless upon the ground that there has been no sufficient proof of the prima facie case entitled to come into evidence and of course the grounds that it does cover subjects that I don't think [185] are properly relevant and Counsel has not indicated which portions he wants to retain and have taken out—I don't believe that in that we know what we are dealing with.

The Court: Remind me after the end of the Government's case.

Mr. Murlless: Mr. Tucker, to the best of my

(Testimony of Lloyd Tucker.)

recollection you were, could the last question be read?

The Court: Weren't you through with him?

Mr. Parker: The examination in chief had been completed as I understood.

The Court: All right, open it up.

Mr. Murlless: What was the last question, Mr. Tucker, what was the last subject matter?

A. Yes, I was testifying with regard to the depreciation taken by the defendant on the Henshaw Road property.

Q. Now, in that connection, you stated that there had been a series of conversations between the, as I recall it, the 6th of January, and 27th or 26th or 27th?

A. Yes, going back to the first one was on October 20th, and the next was on January——

Q. With respect to Government's Exhibit No. 23 and only so much of that as returns to amounts [186] with those conversations with which those amounts appearing on the left hand side of the Government's No. 23 were discussed and arrived at?

Mr. Parker: That calls for a conclusion of the witness, I object.

The Court: You may answer.

A. Yes, I recall that on all of those dates beginning in October and continuing on January and on January 23rd and 24th.

Q. Will you state, pardon me.

A. That the conversation, or portions of it on

(Testimony of Lloyd Tucker.)

all of those dates related to the Henshaw Road property.

Q. In that connection will you state to the jury the method by which you arrived at the conversation just before the arrival of the gross or the aggregate of that cost basis there?

A. Yes, as I stated yesterday, on January 6th Mr. Spriggs advised me at the office of the Internal Revenue here in Phoenix that for a considerable length of time since our last discussion on October 20th, 1948, that he had expended considerable time discussing the matter of the Henshaw Road property with his wife and that he had reviewed all of his available records and he stated on that date that he felt that he couldn't have [187] less than \$40,000.00 invested in the property and on that date I think there is in evidence a statement which I took from him in that regard in which he stated that his investment in the property wasn't less than \$40,000.00. Beginning on January 23rd I had a series of conversations with him and on January 26th I recall that we discussed Mr. Spriggs' assets and liabilities and net worth for the year ending 1945 and he agreed to the items on the statement and signed the statement and we next went into the year 1946, and we prepared the same type of schedule, the net worth statement, for him for the calendar year ended 1946. Mr. Spriggs reviewed the statement at some length and he stated that he would not sign that statement as he had signed the earlier statements. I asked him why he wouldn't



(Testimony of Lloyd Tucker.)

sign it and he stated that his net worth had increased too much and that he wouldn't sign it for that reason. So I went over each item with Mr. Spriggs that was on the statement and discussed it with him and he was in agreement and stated that the items shown were correct with the exception of the Henshaw Road property. I asked him why he now disagreed with the cost of that property when on previous occasions we had been in complete agreement with it. He stated [188] there was just too much income there and he said, "Well, I'll tell you fellows exactly what happened." He said, "When I went to file my 1947 Income Tax return," he said, "I added \$10,000.00 to the previous cost of the Henshaw Road property," and he said, "I saw I was going to have to pay some tax, so I added another \$10,000.00, making a total of \$40,000.00; I wasn't to have to pay any tax for that year," and at that time I made a memo of the statement which, statement which Mr. Spriggs, had made in that regard.

Q. Do you have that memo? A. Yes, sir.

Q. When, in respect to the conversation, was it made?

A. It was made right at the time of the conversation immediately thereafter.

Q. May this be marked for identification?

The Court: That won't be admissible unless Mr. Spriggs signed it. It is a memo of what he has just testified to, isn't it?

The Witness: Yes.



(Testimony of Lloyd Tucker.)

Mr. Murlless: Yes, your Honor.

The Court: Unless you want it in. Do you want it in?

Mr. Parker: No. [189]

Mr. Murlless: Now, in this regard had you in connection with that series of conversations where net worth was stated and the cost basis was arrived at, have you prepared a computation, assuming it is 10% rate of depreciation is correct, upon that—

The Court: Where do you get that, is that the rate the taxpayer used?

Mr. Murlless: Yes, your Honor, and that is where this—

The Court: Does his return show he used that rate?

Mr. Murlless: Yes, your Honor.

The Court: All right.

Q. Have you prepared on the basis of the new or well—first will you state please what aggregate of cost basis was arrived at out of those conversations?

A. The aggregate of the cost of that property as stated by Mr. Spriggs in the conversations that I have related was a total of money expended for improvements on the property, and furnishings in the units, dwelling units.

Q. Do you have them segregated?

A. Yes, sir, they are segregated.

Q. What was the aggregate of that group of [190] determinations that were made in those conversations?

A. The sum of \$18,924.10.

(Testimony of Lloyd Tucker.)

Q. And for what was that?

A. That was for 13 dwelling units constructed on the Henshaw Road property, a store room and a store building, a restaurant and barbershop, and the furnishings in the 13 dwelling units.

Q. And in connection with those entries aggregating how much? A. \$18,924.10.

Q. Now, in connection with those items aggregating that, have you computed a property depreciation for the year 1947 upon the rate as shown by his 1947 Income Tax return?

A. Yes, as shown by his return: I have computed the depreciation on the buildings and upon the furniture.

Q. And will you read that computation?

A. Well, may that be marked for identification first?

The Court: I don't think we can put that computation in. So long as he has testified to facts those are just aids to his memory. The other side is privileged to examine if you wish and may open it up in another way. [191]

Mr. Murlless: Yes, sir. You also conducted the investigation in respect to some transfers of real property with improvements during the tax year of 1947 *which* the defendant, Claude E. Spriggs.

A. Yes, sir.

Q. You have heard the testimony here that went to that subject matter? A. I have.

Q. Have you computed upon the basis of that, assuming for a moment the truth of the Govern-

(Testimony of Lloyd Tucker.)

ment's evidence here in this case, have you computed the net profit and taxable gain with respect, for instance, to the Eglar-Spriggs-Arreola transaction?

Mr. Parker: I should like to register a general objection to testimony pertaining to the alleged capital gains because they fall under "a" and "b" and not relevant to the issue.

The Court: You may answer.

The Witness: Yes, sir, I have made the computation.

Q. Have you it with you? A. I have.

Q. And will you read the computation, or will you state the computation to the jury?

A. With regard to the property which was purchased by Mr. Spriggs from Mrs. Fisher and [192] subsequently sold by him to Mr. Van Denburgh. Now by the gain, the sale price was \$2,696.59. I would say it was \$2750, but Mr. Spriggs incurred some expenses in connection with the sale and the cost was testified to be \$2,000.00 and in addition to that the expenses incurred by Mr. Spriggs have been added to that cost giving him aggregate cost and the profit, the difference between the sales price and the purchase price which is taxable at 100% in this case because it was sold approximately two months from the time it was purchased for \$574.84.

Q. This is the Fisher-Spriggs-Van Denburgh transaction about which you are testifying?

A. Yes, sir.

(Testimony of Lloyd Tucker.)

Q. I see. And what was the profit, did you state it?      A. Yes, sir.

Q. \$547.74—.84? In that same regard, and with respect to the other transaction, the Eglar-Spriggs-Arreola transaction, have you a like computation, and will you state the computation for the jury to determine net profit?

A. Yes, sir. It was testified that the sale price paid by Arreola is \$8,500.00 and in connection with that Mr. Spriggs incurred expenses of [193] \$507.85 for real estate commissions, escrow fee and title fee and Internal Revenue stamps.

The purchase by Mr. Spriggs from Mr. Eglar was \$5,500.00, and the gain or the difference between the sales price and the purchase price is \$3396.31; however, the taxable gain is only one-half of that in the amount of \$1,698.15.

Q. Were, very well, sir, I hand you Exhibit 2 in evidence and ask you if in the appropriate place there if there are any reports of taxable gains?

A. No, no gains reported.

Q. With respect to the Fisher-Spriggs-Van Denburgh what sum should have been in there upon assumption of the truth of the evidence of the Government here?

A. There should have been reported a long-term gain of \$1,698.15 and a short-term gain of \$547.84.

Q. Now, with respect to Government's 2 in evidence, will you look at the depreciation schedule and state to the jury the aggregate of the depreciation claimed?      A. Added in my head here.



(Testimony of Lloyd Tucker.)

Q. Take a moment to do it so that it is not——

A. \$5,462.50.

Q. You stated however that you and Mr. Spriggs [194] came to a determination of an aggregate, well, first, may that be stricken—what is the shown cost basis there for the Henshaw Road property?

A. The correct basis of the property?

Q. No, what is shown on Government's Exhibit 2 for Henshaw Road property.

A. \$20,000.00 and \$20,000.00, total of \$40,000.00.

Q. In two different items? A. Yes, sir.

Q. You have stated, I think, that now with respect to the corrected or agreed cost basis of that property, will you state that, what that was, and how you computed it?

A. Yes, by taking the cost of \$18,924.10 as stated by Mr. Spriggs and applying a 10% rate to that which would depreciate the property out entirely in 10 years and enable the taxpayer to recover the entire cost. The depreciation based upon that rate was the sum of \$1,893.68.

Q. Total result that you testify is that there was some part in excess of \$5,000.00 shown on Government's Exhibit 2 which was disallowable?

A. When I looked at Government's Exhibit 2 I was stating the depreciation, not only with regard to the Henshaw Road property but to the other property which he owned. [195]

Q. Very well. Of the \$40,000.00 claimed cost basis of Government's 2 claims on the basis of the 10% rate, what was the figure?



(Testimony of Lloyd Tucker.)

A. \$4,000.00.

Q. Of that \$4,000.00 in this new, this computation of cost basis, that you arrived at with Mr. Spriggs, some of it is disallowable?

A. Yes, sir.

Q. Will you state to the jury the computation there for?

A. The depreciation claimed on this return was \$4,000.00. The depreciation allowable on 10 year rate was \$1,839.68, a difference was disallowed was \$2,160.32.

Q. Now, that is still on the basis that would depreciate out in 10 years?      A. Yes, no value.

Q. Now, your education and experience in your work you are able to compute the income tax, assuming that the Government's evidence in this matter is correct and in compliance with the testimony you have just given with respect to the taxable gains and the alleged overstatement of cost and disallowed depreciation?

A. Yes, I could make a computation like that.

Q. Will you do that for the jury? [196]

A. Mr. Murlless, may I ask you—as this is a fairly detailed computation——

Q. To what extent?

The Court: Just give your result, the tax he should have reported.

A. Very well, the tax that should have been reported was \$910.09. There was no tax reported therefore for the additional taxation is the same amount, \$910.09.

(Testimony of Lloyd Tucker.)

Q. When you say "No tax reported" you are talking about Government's 2 in evidence? Thank you very much, sir. Your witness.

May we offer Government's 24 again which, as I understand, wasn't admitted yesterday?

The Court: What is that? Just tell me.

Mr. Murlless: The statement taken on January 27, 1949.

Mr. Parker: Same objection.

The Court: What?

Mr. Murlless: Portions that are relevant to the case.

The Court: I'll look at it later.

#### Cross Examination

Q. (By Mr. Parker): Mr. Tucker, how many months altogether did you work on this Spriggs matter? [197]

A. Well, I started in October. I worked November and December, January, February and March. During a five month period, intermittently, of course.

Q. You didn't work full time on it?

A. Not all day, every day.

Q. At some point or other Mr. Beals came into the matter with you?

A. Mr. Beals was investigating the matter prior to October of 1948.

Q. I see. He participated with you in whatever was done after you got on to this case?

A. Yes, sir, after I entered the investigation Mr. Beals and I worked together.

(Testimony of Lloyd Tucker.)

Q. In the course of your investigation you had occasion to ask Mr. Spriggs for all his records pertaining to this Henshaw Road property?

A. No, I didn't ask him for them.

Q. They were asked for then by Mr. Beals, is that your understanding of the matter?

A. Yes, sir.

Q. And after they were turned over, at least he turned over a great many records, receipts and various kinds of data to you, didn't he?

A. Yes, there were records turned over to Mr. Beals.

Q. And weren't there two or three cardboard [198] boxes full of such records handed over to you voluntarily by Mr. Spriggs?

A. Not to me.

Q. Or to Mr. Beals, I mean to say, didn't Mr. Spriggs, all through this matter tell you or at least in some stage of that he had nothing to hide that if he owed any tax to the Government, he'd be glad to pay?

A. I don't recall him making that statement.

Q. Would it be his, your statement that he never made such a statement to you?

A. Yes, it would be my testimony that I can't recall him ever making such a statement.

Q. I'll ask you if on one occasion he made that statement to you in the presence of Mrs. Spriggs?

A. I never saw Mrs. Spriggs in my life until November of 1951 during the first trial of this case.

Q. Now, Mr. Tucker, in addition to boxes of

(Testimony of Lloyd Tucker.)

various papers and receipts which he turned over to you or to Mr. Beals, he also turned over a—some ledgers and various types of books of the kind that people ordinarily keep their records of accounts in at home?

A. Yes, it is my recollection that he did turn [199] over the some boxes like that to Mr. Beals.

A. Yesterday you testified, Mr. Tucker, that you, in connection with the amount of money that he said that he had put into this property, that you directed his attention to his income for, I believe, you said '44 and '45 and '46, and said to him in substance on this kind of an income how did you get the income to put into that property?

A. Yes, that is substantially what was said.

Q. What did you tell us that his response had been?

A. He said all the money I have earned is shown on the return and he stated that he was a lawyer and that he had income from the practice of law and that he had bought and sold considerable real estate on which he had received monies.

Q. To the best of your knowledge is that the sum total of the explanation he gave you?

A. Yes, that's it—Mr. Spriggs on one occasion, October 20th or January 6, made some mention of a, I think it was a gift of money that his wife received in the amount of something like a little in excess of \$8,000.00.

Q. And, Mr. Tucker, have you now related everything that he gave you on any occasion by

(Testimony of Lloyd Tucker.)

way of explanation of the point that you had called to his attention. To the best of your knowledge?

A. To the best of my knowledge; I have had many hours of conversation with Mr. Spriggs. I cannot recall everything that was said.

Q. A great many hours?

A. I could compute it in my mind and tell you almost exactly how many.

Q. Do you keep a record of the number of hours that you spend with a taxpayer?

A. I always keep a record of the days that I interview anyone and sometimes the hours are shown. They may not always be——

Q. Now, Mr. Tucker, is it not a factor that Mr. Spriggs when you called his attention to his modest income during the years '44 and '45 and '46 or any of those years that he told you that the first time the thing was brought up that he told you that his wife's father had given her a ranch or that she had inherited a ranch up in Graham County and that they had sold the ranch for \$24,000.00 just prior to coming down to Phoenix in 1943, and that they were receiving payments in addition to what they got down—they were receiving payments something around seven or eight thousand dollars a year on the purchase price of that ranch—is that not true? [201]

A. I recall somewhat the circumstances because I investigated the transaction up in Graham County.

Q. Would you just answer my question, sir?



(Testimony of Lloyd Tucker.)

A. My answer would have to be that I don't recall whether he said they were getting seven or eight thousand dollars or not. If that is the case I might have the recorded entries because the transactions of the purchase and sale of the ranch they say, as I say, I examined it.

Q. Did he not also tell you about a gift or a loan—did he tell you about the sale by Mrs. Spriggs of an office building and, in Safford that her father had given her, and which her husband had used for a time for an office to practice when you, he was in Safford?

A. Yes, I investigated that transaction.

Q. And then you knew that that sale had been made for about \$3,750.00?

A. I don't recall the price, Mr. Parker, I can very easily give it to you if you would like to know.

Q. And then didn't he also explain to you that they had sold their home in Safford about the same time?

A. That is right, I investigated that transaction, too. [202]

Q. For about \$4,800.00?

A. That may be the amount; I don't remember.

Q. Did he not also tell you, Mr. Tucker, that he had borrowed various sums of money from the Valley Bank during that period when he was improving the Henshaw Road property?

A. I don't recall, he may have said it. I don't know that I investigated all the loans at the Valley Bank.

(Testimony of Lloyd Tucker.)

Q. Do you remember whether or not he told you that he had also borrowed money on the property that he owned at 515 East Pierce?

A. No, I don't recall it.

Q. And that he had mortgaged his own home for approximately \$6,000.00 to raise money to put into this?

A. Yes; I remember that transaction.

Q. Then did you mean to convey by your testimony in chief to this jury that there were no other sources that you knew about and that he was; did you mean to convey the impression to the jury that he was probably cheating on his income tax to the extent of getting this amount of money to invest?

A. As I recall, my testimony was that I was relating the conversation I had with Mr. Spriggs [203] and what he said.

Q. No, Mr. Tucker, I'll ask you if it isn't a fact that during this investigation and particularly during January, 1949, when you were seeing Mr. Spriggs at least in the latter part of that month practically each day at your office, that you repeatedly told him that all you were interested in was to get this straightened up and that you couldn't get it straightened up until he signed some statements or another that you had prepared for him?

A. No, that's not right at all.

Q. That is not right? Now, on those occasions when you saw him there, the 23rd, 24th, 26th, 27th, of January, 1949, how did he come to be in your

(Testimony of Lloyd Tucker.)

office? Did he come there without being told to come, or what?

A. No, it was by appointment by previous arrangements.

Q. What did you do, phone him and tell him to get down there?

A. I don't recall whether I phoned him or whether he phoned me. I know that I didn't see him between January 6th and January 23rd. So whatever happened it must have been a telephone conversation.

Q. And when you computed these figures about [204] cost, didn't he tell you that a lot of his costs he had no records for?

A. Yes, he said that.

Q. And didn't he tell you that at the time he made these improvements he was buying materials wherever he could get them? Didn't he tell you that? A. Yes.

Q. Didn't he tell you that some of the materials were even delivered in the middle of the night to that place by truckers and such people?

A. Well, I don't recall it; he might have.

Q. Didn't he tell you that the conditions under which he was able to get some materials required that he be out there at the site in the dark with the cash in his hand and that the truckers who sold him the material would not even give him an invoice or a receipt?

A. I remember most of that except about the night part.

(Testimony of Lloyd Tucker.)

Q. And that that happened in the daytime, too, that they demanded cash and wouldn't give them any scratch of a pencil that they had even gotten any money or what they had delivered?

A. Yes, I remember some conversations about that. [205]

Q. Did you make any allowance in your computation at all or estimate for these factors and items?

A. Well, if you will forgive me I don't know what kind of allowance.

Q. You have come up here, sir, with a figure which you say, according to your formula, \$18,924.10, according to your formula, that is for the improvements and the furnishings on this property. What I am asking you is, did you make any allowance or whatever for these various items that were cash items without any records or any invoice or anything for them?

A. Well, I think your question is predicated on the statement that I didn't make, that it was my computations. It wasn't my computations at all.

Q. Just a moment, sir. Let me reframe the questions—did you predicate this \$18,924.10 with any allowance at all for these cash items for which there were no records?

A. Yes, the \$16,000.00 figure was stated by Mr. Spriggs to be his total investment.

Q. Well, you had some kind of a breakdown. You put the figures down, you computed this?

A. Well, I would have to answer your question

(Testimony of Lloyd Tucker.)

this way: that probably Mr. Beals and Mr. Spriggs and I all had a pencil from time to time writing [206] figures. I know we wrote down many figures, pages of them.

Q. I am asking you what part of \$18,924.00, if any, was allocated to these cash purchases for which no records were available?

A. They are in the \$18,000.00 figure.

Q. How much was allowed for that type of purchase?

A. Mr. Spriggs never stated how much of the \$18,000.00 that he paid for at night or without a receipt or with a receipt.

Q. And you don't know how much of the \$18,924.00 was allocated to those items for which he had records and cancelled checks and how much of that sum was allocated to those sums for which he had no records?

A. Not exactly. I have seen checks written to various payees which Mr. Spriggs identified as being expended on the Henshaw Road property.

Q. Now, Mr. Tucker, I'll bring this to a conclusion: isn't it a fact that at the time he signed this statement here that his check not yet in evidence on the 27th of January, that he told you at that time, he said, "I don't know whether those figures are right. I assume you are going to let my accountant check them over [207] and that they are signed subject to a subsequent recheck." Didn't he say that?



(Testimony of Lloyd Tucker.)

A. No, he didn't qualify the signing of the statement.

Q. Didn't you tell him at that time to go ahead and sign it that he could check it over and if the figure was wrong just to let you know you would fix it up?

A. I never made a statement like that to any one.

Q. You never did?           A. No.

Q. The fact is then that Mr. Spriggs was, according to your testimony, just accepting your figures for these items all the way through?

A. I am sorry, but I don't think that that was my testimony. As I seem to recall, my testimony was that Mr. Spriggs furnished those figures.

Q. But you did the computing?

A. The computing? You mean I added them up to \$18,000.00; I guess I did.

Q. Now, you have testified to these two transactions here, Arreola and Fisher-Van Denburgh and I have objected on the ground that I think it is irrelevant, but subject to that objection without waiving it, I would like to ask you a question or [208] two with regard to the Van Denburgh matter. Did you make allowance between \$200.00 and \$300.00 actual costs of the architectural plans which Mr. Spriggs included in that sale and which Mr. Van Denburgh had stated on the witness stand was a part of the consideration?

A. I made allowance of \$125.00 which was what

(Testimony of Lloyd Tucker.)

Mr. Spriggs stated he had paid in this and had it in his record. \$125.00.

Q. \$125.00, not \$225.00? A. No.

Q. You did make an allowance of \$125.00—for the other what allowance did you make it, for improvements, water heaters, plumbing, and the like that Mr. Spriggs made between the time he bought it and sold it?

A. I made no allowance: Government's 2 shows that no additions were made to the property, and we discussed the matter with Mr. Spriggs and I have some papers here relating to the money that expanded on the property and it was all claims and expenses allowed as an expense.

Q. So you made no allowance at all for any improvements? A. None at all.

Q. Not a cent? [209] A. No.

Q. How long did you say you had been with the Internal Revenue Service?

A. Since 1945.

Q. Do you take courses of study there in how to testify on a witness stand?

A. No, I don't believe I ever have. I have attended schools sponsored by the Internal Revenue Bureau, but I don't think I have ever attended that.

Q. Don't they lecture you on that subject?

A. I don't believe that I ever was lectured to that.

Q. You are not sure?

A. Well, as I say, I have attended these schools

(Testimony of Lloyd Tucker.)

and some attorney that was instructor may have said something about court procedure. I don't recall it.

Q. That is all. [210]

### Redirect Examination

Q. (By Mr. Murlless): Mr. Tucker, one moment. There has been some reference to the difference between the figures: I think \$18,924.10, and the figure \$19,324.10. From your records can you tell what that difference is?

A. I'll be glad to explain it. The total cost of the entire property was stated by Mr. Spriggs to be \$19,324.10, but depreciation was only applicable to improvements on property, not to land, and the sum of \$400.00 only was allocated to the land. That accounts for the difference.

Q. The sum of \$400.00 was allocated to land?

A. Yes.

Q. Was that also from what he told you about that property?

A. Yes, it came from discussions: I can't remember any direct statement he made. I do recall that in discussing the general description of the area down there that property was not worth very much and land was not worth very much and the lots were presumably not of very much value except the improvements.

Q. Very well, sir; and the difference between those figures is the land?

A. Yes, sir. [211]

(Testimony of Lloyd Tucker.)

Q. With respect to the computation of the net profit and then on to the taxable gain, in connection with the Fisher-Spriggs-Van Denburgh transactions, will you state that computation again not only what was given for the plans but for other expenses?

Mr. Parker: If your Honor please, it's been gone into before.

The Court: Objection sustained.

Mr. Murlless: Now, as I understand it, with respect to the other property that is the Klein's property, the Egler-Spriggs-Arreola property, you stated that consideration was given to certain water heaters by reason that they were claimed as expenses; was that my understanding?

A. My testimony was that Mr. Spriggs had some records relating to that property and all of the expenditures made by him were charged to the expenses during the year they were made and we allowed them to him.

Q. That, did that include water heaters or plumbing?

A. No, I don't specifically—no, I can't say that I do.

Q. Thank you very much. If your Honor please, I should like to call next Mrs. Marjorie Ross. [212]

**MARJORIE ROSS**

a witness of legal age, having been previously sworn to tell the truth, the whole truth and nothing but the truth, took the stand on behalf of the Government and testified as follows:

**Direct Examination**

Q. (By Mr. Murlless): Your name is Marjorie Ross?      A. Yes.

Q. Mrs. Ross, what is your work?

A. I am employed by Struckmeyer and Struckmeyer.

Q. May I ask you to speak a little louder, I can't hear.

A. I am employed by Struckmeyer and Struckmeyer.

Q. What was your work in 1945?

A. Same—as stenographer.

Q. And it still is?      A. Yes.

Q. And what, do you know the defendant, Claude E. Spriggs?

A. Yes, Mr. Spriggs was an associate in the office when I started to work there.

Q. And that is the connection, that is where you met him as, was at your office?      A. Yes.

Q. In this connection have you ever heard Mr. [213] Spriggs state his views with respect to the payment of income tax?

A. I was present in the office when he had discussions with Mr. Struckmeyer and other people.

Q. Can you recall generally what discussions there were there?



(Testimony of Marjorie Ross.)

A. Generally, that he didn't, no one had to pay these taxes if they knew how to take their deductions.

Q. Sorry, I can't hear you.

A. Generally, that you didn't have to pay taxes if you knew how to take your deductions.

Q. Did he mention any specific deductions?

A. Well, I know he had property and he meant depreciation on his property and also just generally speaking.

Q. Thank you very much, ma'm. Your witness.

Mr. Parker: No questions.

### DON HAMMON

a witness of legal age, having first been sworn to tell the truth, the whole truth and nothing but the truth, took the stand on behalf of the Government and testified as follows: [214]

#### Direct Examination

Q. (By Mr. Murlless): Your name is Mr. Hammon?      A. Right.

Q. Will you spell it?      A. H a m m o n.

Q. What is your work, sir?

A. I am employed by the Valley National Bank.

Q. I didn't hear your first name.

A. Don.

Q. Don Hammon? What is your work with the Valley National Bank?

A. Manager of the Note Department.

Q. And for how long has that been your work?

(Testimony of Don Hammon.)

A. Since the latter part of 1948.

Q. And with regard to the case of America vs. Claude E. Spriggs will you, was a subpoena duces tecum directed to you in connection with your work there at the bank?      A. Yes.

Q. In connection with your work are you in that official capacity custodian of certain official records of the Valley Bank?

A. Records that are kept in the Note Department.

Q. And is it, is it in the note department, a business where it's in the business of keeping of records?      A. Yes. [215]

Q. Did you bring some notes?      A. Yes.

Q. What generally?

A. A loan ledger of Mr. Spriggs and a credit file.

Q. And at what particular file, if any?

A. Well, this would cover actually, as far as I can see by the file any from the beginning of his borrowing up until up-to-date.

Q. Do you have the record there, sir, of the loan upon a collateral security, a note from Arreola to Spriggs?

Mr. Parker: If it will shorten it, we will dispense with formalities, and let the gentleman state what it shows without putting it in evidence and speed it up.

Mr. Murlless: Does it show a loan upon a collateral security, a note of Mr. Arreola to the Defendant Spriggs?      A. Yes, it does.

(Testimony of Don Hammon.)

Q. In what sum is that note?

A. \$4,500.00.

Q. And was it, was that note discounted at your bank, or not?      A. No, sir.

Q. In what condition was it at the end of 1947?  
[216] What was its circumstances?

A. \$4,500.00.

Q. It was valued at \$4,500.00?      A. Yes.

Q. And was it encumbered—will you state what happened to that note between a month before the end of 1947 and the end of 1948, between those two times?

A. I don't understand your question.

Q. Was the note discounted to your bank?

A. No.

Q. It was pledged?

A. Yes, as collateral.

Q. When?      A. September 16, 1947.

Q. And for what sum of money?

A. \$4,500.00.

Q. Was that loan paid off?      A. Yes.

Q. When?

A. Well, I'll have to say that it was renewed at one time before final payment was made, but the final payment was on May 14, 1948.

Q. When renewed?

A. March 22nd, 1948.

Q. Did it still have the same collateral? [217]

A. Yes.

Q. One other question: the bank did collect the payments on the note that was pledged?

(Testimony of Don Hammon.)

A. I'm not sure of that.

Q. Very well, sir. Thank you very much. Your witness.

Cross Examination

Q. (By Mr. Parker): Mr. Hammon, will you state whether or not in the years, say, 1944, '45, '46 and '47, '48 there were various loans by Mr. Spriggs from time to time? A. Yes.

Q. Could you tell the jury approximately what the aggregate of these loans would be during that period, say to the close of '47?

Mr. Murlless: I think that is irrelevant, if your Honor please.

The Court: Answer it.

The Witness: \$12,000.00.

Mr. Parker: Now, mortgage loans, for instance, if there is some evidence that he may have borrowed on his home or other real property during that period through your department, would that be through your department? A. No. [218]

Q. Your records here wouldn't cover any mortgage loan on his home or Pierce Street property?

A. No, it wouldn't.

Q. The records that you have here wouldn't cover personal loans, would they, Mr. Hammon?

A. They would, we do have personal loans of a nature through the Commercial Department, but not ordinarily.

Q. I'm talking about the standard type of personal loans. A. No, it wouldn't.

Q. This \$12,000.00 in loans during those years

(Testimony of Don Hammon.)

is completely apart and aside from any real estate loans or loans through the personal loan department?      A. Yes, sir.

Q. Now, as I understand it, these \$12,000.00 in loans during those years, they were unsecured loans of the kind that are often referred to as a loan on an open note, is that what they were?

A. No, with the exception of the \$4,500.00.

Q. That is the only security?

A. That is right.

Q. Or collateral that was pledged?

A. Right.

Q. Otherwise unsecured?      A. Yes. [219]

Q. Short term notes?      A. Yes.

Q. Loans, for instance, obtained for the purpose of fixtures and equipment for court or apartment, would that be handled through your department or some other department?

A. The money that he borrowed from our department could be used for anything.

Q. I see; but suppose he went to a hardware store and bought 10 or 5 water heaters and the conditional sales contract was sold to your bank, would that be handled through your department?

A. Not through our department ordinarily.

Q. What department would handle that?

A. The Installment Loan Department.

Q. Yes. That is all.

#### Redirect Examination

Q. (By Mr. Murlless): How much of those loans



(Testimony of Don Hammon.)

were repaid by the end of 1947, what was outstanding at the end of '47?      A. \$4,500.00.

Q. That is all that was outstanding?

A. Yes, sir.

Q. Thank you very much. May this witness be excused, if your Honor please? [220]

(Thereupon the witness was excused from giving further testimony.)

Mr. Murlless: The Government rests.

Mr. Parker: I waive motion that would ordinarily be made at this stage. Now, if counsel wishes I'm going to have to present some evidence for the record in that. We might possibly reserve it, but I believe that this would be the proper point.

The Court: Offer the evidence, what is that, to offer the evidence?

Mr. Parker: Yes, in support of the motion previously made, and then to make another motion as well. What I have in mind are certain portions of the record in the former case that so far have been considered but are not a part of the record here yet.

The Court: Whatever procedure that you want to follow, Mr. Parker, is alright with me.

Mr. Parker: If your Honor please, I believe the motions would be questions addressed to the Court and not the jury and I wonder if the jury could be excused, and I'll quickly offer the portions of, for the record.

(Thereupon the jury was excused.)

Mr. Parker: Could, at this time, these be [221]

marked for, I suppose, admission in evidence, the minutes of the former case, your Honor. In that same case, may the indictment be received in evidence?

The Court: Wait until we get Mr. Murlless' attention.

Mr. Parker: The indictment in the former, the case, I would like to have marked in evidence in this case for the purpose of this motion. I assume that would be the only reason and the Bill of Particulars.

The Court: Alright.

(Thereupon the documents were marked as "A", "B" and "C" in evidence on the motion for the defendant.)

Mr. Murlless: That is the indictment, is it the minutes, is it the indictment? And "C" is the Bill of Particulars——

Mr. Parker: In Bill of Particulars in case No. 9558.

The Court: What's No. 9558?

Mr. Parker: That's the former trial in this case. Is it in response for motion for Bill of Particulars?

The Court: Yes.

Mr. Parker: That's it. I should like to offer——

Mr. Murlless: To which we'd like to make objections.

Mr. Parker: You want to make them all at once——

Mr. Murlless: We'd like to offer the transcript of the record in the former case on appeal.

(Thereupon the above named document was marked as "D" on the motion.)

Mr. Parker: The mandate of the United States Court of Appeals. The decision of the United States Court of Appeals 198, Federal 2,982.

Mr. Murlless: Defendant's "E" which is identified in the motion. The decision is of the Court.

Mr. Parker: The stipulation and order of dismissal in the former case dated April 14, 1952. Stipulation and orders—for identification on the motion. Those are all marked for identification.

The Court: Mark identified.

Mr. Parker: I beg your pardon, I now offer in evidence with relationship to the motion raising the issue of res adjudicata, and double jeopardy the Exhibits A to E inclusive. G. A to G inclusive for identification here marked.

Mr. Murlless: Remember, your Honor, that they are all inadmissible, in respect to the indictment, being tried here in C100711, which your Honor, I [223] urge them and as inadmissible, first, that they have no relation to the issues being tried here and that in other manners with respect to those motions they are incompetent, and immaterial to the issues in this case.

The Court: Admitted, subject to rejection.

Mr. Parker: Now, if your Honor please, I have a motion. I wish to move to strike all of the testimony relative to the matters set forth in Subdivision A and B of Count 3 as set forth in the Bill of Particulars in the former trial.

The Court: Motion denied.

Q. And I wish to specifically move to—well, I was going to move with more particularity to strike certain testimony.

The Court: Go ahead and I'll rule again.

Mr. Parker: Very well. The testimony of the Fisher-M. H. Van Denburgh,—Jacob Eglar, Joseph Cohen, Carlotta Arreola, Harry C. Jones, insofar as the testimony of those witnesses applied to the matters set forth in Sub-sections A and B of Count 3 in the Bill of Particulars in the former case and the exhibits and I'll have to include Mr. Charles Custin in that and the exhibits in evidence that were received pursuant and in the course of receiving their testimony. [224]

The Court: Motion denied.

Q. If your Honor please, at this time we urge the Court that the doctrine of *res adjudicata* is applicable here, inasmuch as that the United States Attorney has had Mr. Spriggs reindicted for an identical offense as that which he has previously been partially acquitted on, and which under the decision of the United States Court of Appeals is motion for judgment of acquittal, all on the depreciation item should have been granted, at the conclusion of former trial, that it is inescapable effect of the Court's statement there to the effect that the evidence was wholly insufficient, said it didn't come even close to meeting the rule which they had laid down, the rule of proof which they had laid down previously in the case mentioned, and his motion was duly made for a judgment of acquittal, and that he subsequently made another



motion by judgment of acquittal, notwithstanding the verdict, and as the United States Court of Appeals indicated both those motions on the state of the record at that time were good and should have been granted on the proposition of recording as having been done that which the Court said ought to have been done; that the reversal above without any instructions [225] for renewed trial or remand for a new trial in law amounts to an acquittal when the entire record is considered. The doctrine of res adjudicata does not give parties to a law suit a second chance to come back and see if they can't do better on the trial than they did on the first. Everything which was adjudicated, as I understand it at that time or might have been—in other words, the fact that they perhaps didn't subpoena the number of witnesses over a period here would have had no consequences, wouldn't influence the matter at all, and therefore I respectfully submit that the plea of res adjudicata and the motion to dismiss the indictment is good in that particular. I further think it is good because it is an identical charge and there was no substantiations. It would have been very simple to have had Mr. Spriggs indicted under the depreciation item. It could have been described in an indictment readily and confined this case to that portion therefore which hasn't already been passed upon, determined, but rather than that they have chosen to reindict on the entire and identical count, which puts the Government, in my opinion, in the position where they cannot very well escape error. Because, they have tied the



depreciation with the other two [226] capital gains, items which Judge Hall signed and which the United States Court of Appeals apparently so understood, it has heretofore exonerated Mr. Spriggs concerning those matters in the former trial. I think therefore that the plea of *res adjudicata* and motion to dismiss for that grounds should be granted, your Honor.

The Court: Motion denied.

Mr. Parker: I also move that the——

The Court: I think you had better clear up these exhibit questions before you make a further motion of, I have here this 24—that's the statement. That's admitted. You have objected to that. And I have 23. How did this get up here to me? This is the one I asked you to speak to me about again.

Mr. Murlless: Yes, sir, that is right.

Mr. Parker: That is right.

The Court: What is it?

Mr. Murlless: It is a violation of your order yesterday.

The Court: You wanted——

Mr. Murlless: To have it marked out, the last two columns.

The Court: Well, Mr. Parker hasn't seen what changes you want made. [227]

Mr. Murlless: Yes, sir.

(Thereupon the document was handed to Counsel for Defendant.)

Mr. Murlless: Mr. Parker, you want the last two columns eliminated?

Mr. Parker: I want the 20% rates here, the 5%

eliminated and those two columns under there. I wanted for identification of the property and the cost only.

Mr. Murlless: Cost basis, as the Judge indicated?

Mr. Parker: I suggest if Counsel could tear it off—you would have to eliminate it, you couldn't just scribble. Of course, my objection went to the proposition that this is some computation of the witness which the defendant has not signed, and is not bound by it. It is not, it is a self-serving thing to buck up the testimony or it might be said to be explanatory of the testimony if it is explanatory of the testimony by Mr. Tucker. It is Mr. Tucker's exhibit, it would serve the cause of his own testimony.

The Court: It is admitted with the two right hand columns removed.

(Thereupon the document was marked as Government's Exhibit 23 in evidence.) [228]

Mr. Parker: If your Honor please, I move the admission into evidence Exhibit A to B inclusive.

The Court: I admitted them.

Mr. Parker: I beg your pardon.

The Court: Subject to the Government's objections. You wanted them—those don't go to the jury.

Mr. Parker: Yes.

The Court: I have these two documents to the County Assessor. You will have to state your claim about them again, Mr. Murlless. I am not clear what you feel the need is.

Mr. Murlless: We felt the need for them, we anticipated and actually received in Court an ob-

jection to the procedure, the further procedure without making a prima facie case, and we didn't identify the other income tax return because he anticipated the same thing and without them, particularly, and even now, your Honor, it took those admissions to identify the property except that we had those things to show, not only his legal description but its street address.

The Court: Well, as of now do you want to withdraw them?

Mr. Murlless: I move again their admission in evidence. [229]

The Court: Why do you need them at this stage of the case?

Mr. Murlless: They aid in the identification of the property.

The Court: You have other evidence identifying it?

Mr. Murlless: Yes, sir.

The Court: I included these, they have two other stuff——

Mr. Parker: If your Honor please, I will wind this up with a motion—I move the Court for a judgment of acquittal on a directed verdict upon the grounds that the evidence exclusive of the defendant's own incriminating admission, it doesn't constitute a prima facie case and constitute a corpus delicti and that its admission cannot be considered for the purpose of supplying that deficiency and that such being the status of the record it is insufficient for submission to the jury.

The Court: Motion denied. Do you intend to put on testimony, Mr. Parker?

Mr. Parker: A very short bit.

The Court: All right. Call the jury back. [230]

Defendant's Case

Mr. Parker: Mr. Beals.

ARTHUR R. BEALS

a witness of legal age having been first duly sworn to tell the truth, the whole truth and nothing but the truth took the stand and testified on behalf of the defendant as follows:

Direct Examination

Q. (By Mr. Parker): May this document be marked for identification?

(Thereupon the document was marked as Defendant's Exhibit A for identification.)

Q. Mr. Beals, I hand you Defendant's Exhibit 1 for identification, and ask you if you have ever seen that document before?

A. Yes, I have.

Q. You prepared it? A. Yes, I did.

Q. Is it in your handwriting?

A. Yes, sir.

Q. Is it signed by you?

A. Yes,—wait a minute, yes.

Q. Is it dated? A. Yes.

Q. Did you hand it to Mr. Spriggs or deliver it to him on or about the date it bears? [231]

A. Yes.

(Testimony of Arthur R. Beals.)

Q. And what is it?

A. It is a schedule of depreciation.

Q. Which you set up for him?

A. On certain properties which he had requested of me for the purpose of preparing his 1948 Income Tax Returns.

Q. You set it up as a kind of a model on depreciation, was that it or what you thought?

A. Not as a model on depreciation, but as a basis in keeping with the statements which he had previously given as a correct cost of these particular items.

Q. And the correct way, in your opinion, to depreciate them—this isn't a trick question.

A. Yes, yes, that's not binding in any way as to the length of life but amending the 10% depreciation which he had previously claimed.

Q. Not binding, but just illustrative of the way you felt it should be set up from your knowledge of the matter.

A. Yes.

Q. We offer this in evidence. That is all, Mr. Beals. [232]

Q. (By Mr. Murlless): Now this may take a few minutes here. Now, in this connection may I ask a question on voir dire, if your Honor please? I see a column there that's devoted to amounts.

A. Yes.

Q. Sums of money. What do those reflect?

A. Those reflect the true cost of these items of property as Mr. Spriggs had related them to Mr.



(Testimony of Arthur R. Beals.)

Tucker and to me through the course of this investigation.

Q. Now, in going back one column I see a column of dates. What does that reflect?

A. That reflects the date on which these particular assets were acquired through construction or purchase.

Q. As he related it to you?

A. As he related them to us.

Q. And each item he had agreed to?

A. Yes.

Q. You go back one more column—what does that refer to?

A. That identifies the particular units, particular items of property, the location of these properties and as relates to the Henshaw Road Property it itemizes the particular units as to the cost which Mr. Spriggs had given us under his [233] own estimate, both as to the cost of the particular units and as to the cost of furniture which he had put into these.

Q. I understand.           A. Properties.

Q. No objections, I'd like to ask a question on cross examination before we quit.

The Court: Admitted.

#### Cross Examination

Q. (By Mr. Murlless): Now, sir, with respect to Defendant's A in evidence, what does the last column represent?

A. It is headed Depreciation Reserve as of De-

(Testimony of Arthur R. Beals.)

December 31, 1947. It represents the proper amount of depreciation which would have been allowable and on the valuations as set forth in this statement up to that particular point in time.

Q. Then it wasn't the, it doesn't state the depreciation for 1947, it states an aggregate depreciation allowable since the obtaining of each of the items of property?

A. Yes.

Q. It was intended to serve Mr. Spriggs in the [234] figuring of an amended return for the year of 1948?

A. Yes, sir.

Q. In that same connection, what were the rates of depreciation for items that were put in this over your signature?

A. They are not expressed as "rates", they are expressed as estimated life which in substance is the same.

On these, as to the property in the nature of furniture and fixtures the 10 year life has been obtained.

Q. Is it what the exhibit says?

A. It says 10 years.

Q. What does it say for lands or improvements on lands?

A. For lands, no depreciation, but for improvements on land, 20 years estimated life which would be a 5% depreciation rate rather than a 10%.

Q. Your witness.

(Testimony of Arthur R. Beals.)

Redirect Examination

Q. (By Mr. Parker): Mr. Beals, are you with the Government now?

A. I am not with the Federal Government, if that's what you mean. [235]

Q. What are you doing at the present time?

A. I am now professor at the Arizona State College at Tempe.

Q. How long have you been professor over at the College? A. Three years.

Q. And were you a professor before you became a Government Agent? A. No, I wasn't.

Q. You have just become a professor from the Government service? A. That is correct.

Q. That is all.

Mr. Murlless: Thank you very much.

Mr. Parker: Mrs. Claude Spriggs.

MRS. CLAUDE SPRIGGS

a witness of legal age, having first been duly sworn to tell the truth, the whole truth and nothing but the truth took the stand and testified on behalf of the Defendant as follows:

Direct Examination

Q. (By Mr. Parker): What is your name?

A. Mrs. Claude Spriggs.

Q. And are you the wife of Claude E. Spriggs?

A. I am.

Q. And will you just speak out, Mrs. Spriggs.

(Testimony of Mrs. Claude Spriggs.)

The jury will want to hear what you say. How long have you and Mr. Spriggs been married?

A. Twenty-five years.

Q. And when did you move to Phoenix?

A. I believe it was '43.

Q. 1943, and from where did you come to Phoenix? A. From Safford, Arizona.

Q. And had you resided in Safford all of your life prior to coming to Phoenix?

A. Yes, sir.

Q. You were born there, were you?

A. Yes, I was.

Q. And was Mr. Spriggs also a native of Safford? A. No, sir.

Q. How long had he been there to your recollection?

A. Well, most of my life he was there.

Q. Most of your life. And does, is your father dead or alive? A. He is alive.

Q. Mrs. Spriggs, prior to your coming to Phoenix, did you receive a gift of a ranch?

A. Well, I received a gift of money and I [237] bought a ranch with it.

Q. You bought a ranch with it? Where did the money come from?

A. My father gave it to me.

Q. He gave it to you, and then did you sell that ranch? A. Yes, sir, I did.

Q. Do you remember when you sold it, approximately when you sold the ranch?

A. It was about in 1943.

(Testimony of Mrs. Claude Spriggs.)

Q. About the time you came to Phoenix?

A. Yes, sir.

Q. That was your property, your separate property?

A. Yes, sir, it was in my name.

Q. What did you get for the ranch?

A. \$24,250.00, something like that.

Q. Do you recall how much was paid down?

A. No, I don't.

Q. Do you recall how it was paid out, whether in monthly or annual or semi-annual—

A. It was paid in big payments.

Q. Do you remember approximately what the payments were annually?

A. Oh, I'd say around \$7,000, something like that. [238]

Q. Were those payments made during about '44, '45, '46, something in there?

A. Yes, sir, along in there.

Q. Did you sell any other property which was your separate property?

A. Yes, sir, I sold a small office building.

Q. In Safford? A. Yes.

Q. When did you sell that?

A. Oh, I think it was about '46, '47; someplace along there.

Q. '46 or '47? A. Yes.

Q. And you got \$3,750.00 for that?

A. That is right.

Q. And did any of this money that you received from the sale of your ranch and your office build-



(Testimony of Mrs. Claude Spriggs.)

ing go into the improvement of this Henshaw Road property?

A. Yes, sir, they were building it and used the money for that.

Q. Do you have any recollection as to how many thousands of dollars of your money, your separate money went into that project there?

A. I turned it over to the community and put it there. [239]

Q. You turned it all over to Mr. Spriggs and it went into——

A. Yes, sir.

Q. In addition to that money did you sell a home there in Safford during this period?

A. Yes, we did.

Q. Do you recall what you got for that, approximately?

A. It was around forty-five or forty-eight hundred dollars.

Q. And did that money go too, the same way the other did?

A. Yes.

Q. And did Mr. Spriggs borrow in addition to the money that you got out of the sales of this property to carry on this Henshaw Road construction?

A. Yes, we borrowed on our home and other rentals that we had and put it into that.

Q. Now, Mrs. Spriggs, I'll ask you, did you undertake during the improvement of this Henshaw Road property to keep any records at all of any part what was spent on it?

A. Yes, sir. I kept records of materials that we

(Testimony of Mrs. Claude Spriggs.)

bought, I used to go in the car and pick them up to the men that were working. But I don't [240] have the books, we turned them over to the Government.

Q. What did they look like?

A. A ledger book about this long (indicating) and a little black one that I carried in the car and wrote down these things.

Q. Well, did the Government agents return records which Mr. Spriggs had given them?

A. They returned all of them but those two.

Q. Never returned those two books?

A. No, sir.

Q. Do I understand it is your testimony that you personally delivered to them those two books?

A. They were there at the house and they were in the study and I went upstairs and brought the books down and handed them to them.

Q. To whom?           A. To Mr. Beals.

Q. To Mr. Beals, and do you remember—I know its been some time ago, but do you remember roughly or approximately when it was?

A. No, I wouldn't like to say. Along the beginning of the investigation. They were still coming out and getting——

Q. Have you ever seen those two books since?

A. No, I have not. We looked for them. We [241] wanted to take them to Washington, and couldn't find them.

Q. Are they present here in the courtroom. You can see, on Counsel's table or the Clerk's desk?

(Testimony of Mrs. Claude Spriggs.)

A. No.

Q. You don't see them? A. No.

Q. And you say you got the other things back but not these two things where you kept the expenditures——

A. We did not get them back.

Q. Do you, did you, Mrs. Spriggs, ever have occasion to total up or arrive at a final balance of investment in that Henshaw Road property?

A. No, sir, I didn't because we thought that when it was all finished we would turn it over to a bookkeeper and they picked up the stuff so it wasn't totaled up.

Q. Was it all finished at the end of '47, or did some of it continue on until '48?

A. We were always improving it, and doing things, I can't say when it was finished.

Q. Do you have any memory at all that would serve to enable to, you to give the Court and the Jury your estimate of what went into that [242] property?

A. No, I wouldn't like to say, if I had the books, it would be a different thing. I just don't like to make a statement on it.

Q. Would you say that it was as small an amount as eighteen thousand and some odd dollars?

A. I certainly wouldn't.

Q. How is that?

A. I certainly wouldn't.

Q. Do you think it was a great deal more than that? A. Yes, I do.

(Testimony of Mrs. Claude Spriggs.)

Q. And, by the way, about 1947 or '48, did you and Mr. Spriggs have an offer to purchase that property from someone?

A. We had an offer, somebody wanted to buy it from us.

Q. Yes, at what price?

A. They offered \$55,000.00 for it.

Q. Was that to be a cash or deferred payment proposition?

A. It was cash.

Q. In other words, then, do you remember whether it was in '47 or '48 that that offer was made?

A. The place wasn't completed. [243]

Q. It still wasn't completed?

A. No.

Q. At a time when you were offered \$55,000.00 cash for the property?

A. Yes, we were.

Q. You may cross examine.

Mr. Murlless: No questions.

Mr. Parker: Were the technical matters of renewing the motions made at the conclusion of the Government's case, which motions and each of them we do at this time renew, the defendant is ready to rest, your Honor.

The Court: Have a rebuttal, Mr. Murlless?

Mr. Murlless: No, your Honor.

The Court: Now, Mr. Parker, I don't want to be technical, but you'd better restate your motions now. Now that Mr. Murlless said that he didn't have a rebuttal. The case wasn't quite concluded when you spoke.

Mr. Parker: At this time I wish to renew all the motions heretofore made at the close of the

Government's case, particularly the motions, the motion predicated upon the doctrine of *res adjudicata*. It is our contention that this matter has been in whole or part been adjudicated favorably to the innocence of this defendant. [244]

The Court: The ruling will be the same. Ladies and Gentlemen, we won't be able to conclude this today. You are excused until 1:00 o'clock next Monday afternoon. [245]

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### Court's Instructions to the Jury

The Court: These income tax cases, Ladies and Gentlemen; the important thing is whether the taxpayer intended to commit a fraud on the Government. These charges are very serious charges; they are felonies, and our law has always treated a felony charge as a, very properly, as a very serious matter, and there must be proof in such cases of specific criminal intent. That is to say, that the defendant did what he was charged with, not only knowingly, but wilfully, and with a bad heart and bad motive and knowing that he was violating the law and intending to violate the [297] law, and in this particular type of case, that he was attempting to defraud the Government out of the tax that he lawfully owed to it. This defendant, like in every criminal case, has the benefit of presumption of innocence. He is presumed to be innocent until proven guilty to your satisfaction beyond a reasonable doubt and to a moral certainty. That is to say, the defendant doesn't have to prove himself inno-



cent. The Government, which is the charging party, has to prove him guilty. The Government has the burden of proof of all the material allegations of the indictment. The burden of proof means that it must satisfy you beyond a reasonable doubt of the truth of the material allegations of the indictment. Reasonable doubt means such a doubt as would cause an average, reasonable person to hesitate in making an important decision in his own, or her own, affairs. This indictment is not long. You will have it with you in the jury room. It is not to be considered as evidence in the case, but merely for your guidance and help. The Court's charges against the defendant, is as I spoke a moment ago, are the material allegations of it. The things that the Government has to prove before you may return a verdict of [298] guilty is to prove on the burden of proof. This, as you will understand now, is for 1947 income tax, and so the charge, summarizing, is that, on or about January 7, 1948, the defendant did "wilfully and knowingly attempt to defeat and evade;" those are the words of the Statute, Ladies and Gentlemen, "a large part of the income tax due and owing by him to the United States for the calendar year 1947." Now, those are things, before the Government is entitled to a verdict of guilty, you must find were one by the defendants with criminal intent, knowing that what he did was wrong; that he attempted to defeat and evade his tax wilfully and knowingly and unlawfully.

Now, how do they claim he tried to do that? To

defeat his tax? By filing a false and fraudulent income tax return. And so, those are material allegations. The Government has the burden of proof, regarding of which the Government has the burden of proof.

You may not find him guilty unless you are convinced beyond a reasonable doubt that the return that he filed that year was false and fraudulent and also, as I said to you previously, made with criminal intent, filed with criminal intent. And what are the details? Alleged false and fraudulent [299] return. He stated that his net income for the year was the sum of \$1,928.17, and that no tax was due on it, whereas, as he then and there well knew—there again, you have the element of knowledge as a material allegation—it is a material allegation, of course, that he filed a return, and as to the amounts of it I will say something in a minute; but that is material that he then and there knew, and the Government has a net, and he well knew the net income for the said year was a different sum—not the \$1,928.47, but, as alleged here, \$7,049.15.

You know—those are the material allegations of the indictment except as to those figures; the Government is not held strictly to those figures if its evidence here is different from those figures. I'll refer to my notes in a minute and refresh your recollection as to what these figures are. The end of the indictment said that, "upon which net said income was \$7,000 odd dollars there was owing to the United States of America an income

tax of \$1,058.03, whereas he made a return showing he didn't owe any tax." Now, the Government's figures that are relied on from the evidence have to do with three items. You remember this perhaps quite as well as I do, [300] but I have had the opportunity to make notes, and you haven't. So, if you will bear with me, I'll just state what the items were. They claim that he had, the defendant had a taxable gain, what they call a short term taxable gain, of \$547.48. That is on the piece of property of the unimproved lot, as you may remember. I don't remember who he bought it from, but I remember he sold it to that lawyer, Van Denburgh. The Government claims that he sold that within the six months' period and so there was, he should have shown on his return, \$547.48. on taxable income on that. Then, as to that property out this way on Washington Street where the little Mexican woman was the buyer, and her husband, they claim that as to that he should have reported a long-term taxable gain, because he had held that property longer than six months, so only one-half of it was shown, but he should have shown the one-half of the profit. That is what I mean by taxable gain, \$1,690.00.

Now, then, on the Henshaw property, we have the map on the board; the Government's theory is that that is a matter of depreciation; that he took a greater depreciation than he was entitled to, because the Government claims he over-stated [301] the cost of it. Stated, so the Government claims, that it cost him \$40,000, as to which he took a de-

preciation of ten per cent, or \$4,000, whereas the Government claims it only cost them \$20,000 in round figures, a little less than \$20,000, and that the correct depreciation at the same rate of ten per cent, not making any point of that, because I have not allowed that to come into the case, taking his own figures as to the cost that, it doubled the cost, or more than doubled the actual cost, and that the depreciation on his on which he was entitled was \$1,855.01, so the claims that he over-depreciated, claimed an excess of depreciation, the difference between those two figures of \$2,162.32. So, the items then, re-capping, they said had a bearing on his taxable income, were the first item, \$547.48, and the second, \$1,698, and the third item of over-depreciation of \$2,160.32. Now, I haven't totaled those three items, but, anyway, how the whole of it comes out, of which is really the important thing is, here the Government claims that those items, having been correctly stated would have shown him owing \$910.09, whereas the way he set up the figures, he showed he didn't owe any tax. That is what this [302] case is about. Whether or not the fact that he didn't show those items correctly which would have resulted in a tax of \$910.09, constituted a wilfull fraud by him—if you are convinced beyond a reasonable doubt and a moral certainty that it is intentional and that there was fraud as to the facts, the underlying facts, that he did make that taxable gain as to the sale of the two pieces of property, and that his cost was not \$40,000, but substantially less figure than that, then



it is your duty to return a verdict of guilty.

And I may say that the Government does not have to prove, satisfactorily, all three of those items. To satisfy you by any two of them, or any one of them, beyond a reasonable doubt it was done wilfully and with the intention and as an attempt to defraud the Government and evade his taxes, he will be entitled to a verdict of guilty, and it is your duty to return one. On the other hand, equally, if you are not satisfied with those beyond a reasonable doubt, it is your duty, the defendant given due effect to the presumption of innocence, thereby equally, your duty to return a verdict of not guilty. You will take the exhibits, please, to the jury room and give them the weight [303] you feel they are entitled to along with the evidence you have heard from the witness stand. Your verdict must be unanimous and be signed by your Foreman, whom you will elect. The defendant didn't take the witness stand. You are not to give any effect, that the defendant in a criminal case has that right under our law. He doesn't have to take the witness stand. He is entitled to present his case, if that is his idea, some other way. Just put that out of your mind and don't give weight to that one way or another.

It is your duty as jurors to consult with one another and deliberate and reach an agreement, and you can do so without violence to your individual judgments in this case. You must decide the case to yourselves; but you should do so after a careful; each of you must decide the case for yourself.



After careful consideration of the case by your fellow jurors. And you should not hesitate to change an opinion when convinced that it is erroneous. However, neither should you be influenced by voting for a single reason because the majority of the jurors are. You should not surrender an honest conviction and waive the guilt or innocence of the defendant for the mere purpose of returning a [304] verdict, or solely because of the opinion of other jurors. You are the tryers of the facts. You are the exclusive judges of the credibility of the witnesses and of the weight and value of their testimony. There has been some reference here to the defendants relations with some people who were employed by him. He is not on trial for that, ladies and gentlemen. I am sure you understand. He is just on trial here for the alleged offense of attempting to defeat and evade the income tax by wilfull fraud. We all have our troubles with other people in the world, and when a man is on trial for a charge, that is the case to be tried and that is your duty here and that alone. You may retire to the jury room.

(Thereupon the jury retired for its deliberations at 3.05 o'clock p.m.)

The Court: Mr. Parker, you are entitled to objections to the instructions.

Mr. Parker: I wish to compliment the Court on its instructions. I have no exceptions or any issues to take with them.

The Court: The Court is in recess.

[Endorsed]: Filed June 24, 1954.

[Endorsed]: No. 14409. United States Court of Appeals for the Ninth Circuit. Claude E. Spriggs, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Arizona.

Filed: July 1, 1954.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

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In the United States Court of Appeals  
for the Ninth Circuit

No. 14409

CLAUDE E. SPRIGGS, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

### STIPULATION

It Is Hereby Stipulated, by and between Jack D. H. Hays, United States Attorney for the District of Arizona, Attorney for Appellee, and Claude E. Spriggs, Appellant, that the attorney's argument to the jury inadvertently printed in the Reporter's Transcript be deleted from the printing of the record on appeal.

It Is Further Stipulated by and between the parties hereto that the appellant's designation of record on appeal and appellee's designation of ad-

ditional portions of record on appeal, together with appellant's designation of points upon which appellant relies upon appeal, which were heretofore filed with the Clerk of the United States District Court of Arizona, and thereafter sent to this Court, under his certificate of record on appeal and set out in said certificate as Item No.'s 24, 25 and 26 be adopted for the appellant's statement of points and designation in this Court as provided by this Court's Rule 17 (6), as suggested in the Clerk's letter of July 1, 1954.

JACK D. H. HAYS,

United States Attorney

/s/ By ROBERT S. MURLLESS,

Appellee

/s/ CLAUDE E. SPRIGGS,

Appellant

[Endorsed]: Filed July 7, 1954. Paul P. O'Brien,  
Clerk.